

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

JEFFERSON-PILOT INSURANCE COMPANY,)
)
)
Plaintiff,)
)
)
vs.) CASE NO.
)
) C-1-02-479
CHRISTOPHER L. KEARNEY,) (Judge Spiegel)
)
)
Defendant.)

COPY

The deposition upon oral examination of HAROLD
SHELTON, being taken pursuant to Order and in accordance
with the Federal Rules of Civil Procedure before Rebecca J.
Huddy, Notary Public, at the Marriott, 304 North Greene
Street, Greensboro, North Carolina, on the 7th day of May,
2004, beginning at 12:20 p.m.

APPEARANCES:

For the Plaintiff: Mr. William R. Ellis
 Wood & Lampert, LLP
 600 Vine Street, Suite 2500
 Cincinnati, Ohio 45202

Ms. Stephanie Farabow
 Jefferson-Pilot Life Insurance Company
 100 North Greene Street
 Greensboro, North Carolina 27401

For the Defendant: Mr. Michael A. Roberts
 Graydon, Head & Ritchey
 511 Walnut Street
 1900 Fifth Third Center
 Cincinnati, Ohio 45202

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- 1 A. No.
- 2 Q. Okay. Did you just retire from Jefferson-Pilot and
- 3 take on other employment or do you --
- 4 A. No, I just retired, yes.
- 5 Q. Okay. So from your retirement date through at least
- 6 two weeks ago, you didn't have any discussion in any
- 7 way about Mr. Kearney?
- 8 A. No.
- 9 Q. Prior to your retirement date, did you ever discuss
- 10 with anyone the thought that Jefferson-Pilot had
- 11 mistakenly paid Mr. Kearney benefits?
- 12 A. Not that I recall.
- 13 Q. Okay. Two days ago or within the past week Mr.
- 14 Roberson called you and shared that with you, correct?
- 15 A. No.
- 16 Q. He testified this morning that you and he spoke within
- 17 the past two days and you discussed the subject that
- 18 Mr. Kearney, according to Jefferson-Pilot or somebody
- 19 else they employ, made a mistake for eight or nine
- 20 years?
- 21 A. Well, we had missed -- we were in a meeting several
- 22 days ago, but he did not call me.
- 23 Q. Very well. Who was at the meeting?
- 24 A. I believe it was he, myself, Mr. Ellis, and
- 25 Ms. Farabow.

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1 The witness, HAROLD SHELTON, being first duly
 2 sworn, was examined and testified as follows:

3
 4 EXAMINATION (by Mr. Roberts):

5
 6 Q. Mr. Shelton, my name is Mike Roberts. I'm a
 7 defendant's lawyer. I represent the defendant in this
 8 lawsuit, Mr. Chris Kearney. He's been sued by
 9 Jefferson-Pilot and we're here to find out why.

10 Did you work on Mr. Kearney's claim?

11 A. I think at some point during those years that I was
 12 involved in it at some point, but -- you know, just
 13 sort of in and out depending on what the circumstances
 14 were and if Mr. Roberson was not available or if I was
 15 needed in that case. The answer is yes.

16 Q. Okay. Prior to two weeks ago -- let's forget about
 17 two weeks ago till today -- when was the last time you
 18 spoke to anyone about the Chris Kearney claim?

19 A. I really don't know.

20 Q. Okay.

21 A. Over five years, I would think, since I retired.

22 Q. When did you retire?

23 A. December 31, 1999.

24 Q. I hope you didn't wear a tie and tie clip today,
 25 because Mr. Ellis and I did not.

- 1 Q. Stephanie? When did the meeting take place?
- 2 A. I believe it was Wednesday.
- 3 Q. Where did it take place?
- 4 A. At Jefferson-Pilot.
- 5 Q. Okay. And was Mr. Ellis conducting the meeting?
- 6 A. Yes.
- 7 Q. And he's the one that informed you that the mistake
- 8 had been made?
- 9 A. Yes.
- 10 Q. Very well. Was that news to you?
- 11 A. Yes.
- 12 Q. How long did you work at Jefferson-Pilot?
- 13 A. I was with Pilot Life, which was a subsidiary at the
- 14 time, from 1960, December 1960 to 1990, at which time
- 15 the two companies combined and I came here -- came to
- 16 Jefferson-Pilot downtown and I worked for the two for
- 17 a total of 38 years.
- 18 Q. I bet you didn't work just in disability insurance
- 19 claims that whole time.
- 20 A. I was started in the Group Division in 1960, worked
- 21 there for --
- 22 Q. Pre-ERISA?
- 23 A. Yes -- for about 20 years, and then I transferred to
- 24 the Individual Health Division.
- 25 Q. Okay. And when you were doing the pre-ERISA and

<p style="text-align: right;">Page 6</p> <p>1 post-ERISA group claims, were those disability claims 2 included in --</p> <p>3 A. Yes, to some extent, but primarily health insurance.</p> <p>4 Q. Okay. And in 1980 or thereabouts when you switched 5 over to individual, did your focus on disability 6 insurance claim administration increase?</p> <p>7 A. Yes, even though we also had hospital claims, 8 accidental death -- I was more or less involved in all 9 of that, hospital and disability.</p> <p>10 Q. Did you feel comfortable and competent in reviewing 11 disability insurance policies to ascertain their 12 meaning?</p> <p>13 A. Yes, I think so.</p> <p>14 Q. Throughout your 38-year career?</p> <p>15 A. Yes.</p> <p>16 Q. What was the position you held prior to the merger of 17 Pilot and Jefferson?</p> <p>18 A. I was supervisor of Claims, Group Claims, then 19 became -- I was Assistant Vice President and then when 20 we combined the two, I was manager of policy service 21 and claims in the Individual Health Division, and then 22 when we came downtown, they changed the focus and I 23 became a manager in lieu of Assistant Vice President. 24 The title was changed only.</p> <p>25 Q. Manager of the individual?</p>	<p>1 contract.</p> <p>2 Q. Sections that he pointed out to you or did you spend 3 time independently reading the whole policy on your 4 own?</p> <p>5 A. Just reading through -- there were some areas pointed 6 out, but just reading through, just reviewing them, 7 because it's been a long time.</p> <p>8 Q. I hope to forget everything about my career when I 9 retire.</p> <p>10 A. Well, I try to, even though I enjoyed my 38 years with 11 the company, very fulfilling.</p> <p>12 Q. I enjoy some of mine. Some things I don't enjoy. 13 Did Mr. Ellis allow you to sit down by 14 yourself with the policy and review it cover to cover?</p> <p>15 A. Not particularly that I recall.</p> <p>16 Q. Okay. But you know what policy we're talking about, 17 you know, some fancy nomenclature, WJ576A or something 18 like that, right?</p> <p>19 A. Yes.</p> <p>20 Q. Was that version of policy one that your department in 21 the '90s had sufficient experience with? I mean, it 22 wasn't just Mr. Kearney's claim?</p> <p>23 A. Yes.</p> <p>24 Q. And the residual disability rider and the Social 25 Security Supplement rider and the increase in</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Health, yes.</p> <p>2 Q. So throughout the '90s you were doing -- overseeing 3 claim analysts in the disability insurance claim 4 field?</p> <p>5 A. And hospital, yes.</p> <p>6 Q. And hospital. Were there a lot of mistakes being made 7 because the department was overloaded?</p> <p>8 A. I felt with the volume of work that was there, our 9 folks did a great job. I think, you know, we were 10 constantly concerned about the welfare of the insured. 11 Whatever this may appear, our major concern was that 12 we get the folks their benefits, that we pay the 13 claims according to the contracts, and that was our 14 primary focus. I do feel that we had -- the reason I 15 got involved in the claim and JL got involved in the 16 claim was because of the staffing, we just needed all 17 the help we could get in those situations.</p> <p>18 Q. Are you talking about Mr. Roberson when you refer to 19 JL?</p> <p>20 A. Yes, JL Roberson.</p> <p>21 Q. Within the past -- well, at your meeting with 22 Mr. Ellis when he conducted and shared with you the 23 revelation that you had made a mistake, did he give 24 you the opportunity to look at the policy?</p> <p>25 A. We did briefly review the policy and provisions of the</p>	<p style="text-align: right;">Page 9</p> <p>1 additional benefits rider, were those also provisions 2 that Jefferson-Pilot sold that you had a comfort level 3 with through the '90s?</p> <p>4 A. Yes, I think so. The residual was one that did not 5 come up very often. It was the one that -- most 6 people were totally disabled and not able to go back 7 to work.</p> <p>8 Q. Okay. When a residual situation arose, did that 9 require that you concentrate a little more closely on 10 the actual policy rights?</p> <p>11 A. I think so.</p> <p>12 Q. Okay. Mr. Shelton, have you ever met Mr. Kearney 13 before?</p> <p>14 A. No, I have not. When he came out, he introduced 15 himself when I was outside, yes. That's the first 16 time I'd met him.</p> <p>17 Q. You and he have spoken on the phone many times --</p> <p>18 A. Yes.</p> <p>19 Q. -- over the course of several years?</p> <p>20 A. Yes.</p> <p>21 Q. And you have corresponded with him?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Do you recall the period of time when 24 Jefferson-Pilot sought some assistance with Mr. 25 Kearney's claim from a company called DMS?</p>

<p style="text-align: right;">Page 10</p> <p>1 A. Yes.</p> <p>2 Q. What did you know about DMS before seeking their 3 assistance on Mr. Kearney's claim?</p> <p>4 A. I did not know anything about them. They were 5 recommended by the reinsurer.</p> <p>6 Q. Okay. Did you actually speak to the reinsurer about 7 the recommendation?</p> <p>8 A. I think they may have discussed that with us that they 9 would like for them to review that, and as I recall, 10 we may have furnished the file to them for review, but 11 other than that, I knew nothing about them.</p> <p>12 Q. How was it that Mr. Kearney's claim came up for 13 discussion with the reinsurer and the need to have 14 more eyes take a look at the claim?</p> <p>15 A. I believe the normal initiation in a situation like 16 that is that the reinsurer on a periodic basis, 17 sometimes once a year, would come through and they 18 would review -- ask for and review certain claims --</p> <p>19 Q. Okay.</p> <p>20 A. -- some criteria that they may have as a reinsurer. 21 They would ask for the files and review those, make 22 recommendations and ask for our concurrence as to, you 23 know, whether this was acceptable.</p> <p>24 Q. So they would perform somewhat of an audit function?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Okay. I haven't seen it, but maybe Mr. Ellis would be 2 good enough to give me that later.</p> <p>3 So when Employers Reinsurance came to 4 Greensboro to take a look at some of the claim files, 5 do you recall a focused discussion with them about Mr. 6 Kearney's claim?</p> <p>7 A. I do not.</p> <p>8 Q. Okay. Is it your sense that that's what happened, 9 though?</p> <p>10 A. Yes, the fact that they were paying part of the charge 11 for DMS leads me to believe that they are the ones 12 that recommended it for review.</p> <p>13 Q. Did they have experienced claim type folks who 14 actually looked at the policy and the riders and the 15 information in the file?</p> <p>16 A. Yes.</p> <p>17 Q. Did they tell you when they audited Mr. Kearney's 18 claim file that you had made a mistake?</p> <p>19 A. I do not recall that they did.</p> <p>20 Q. Okay. There's no record of that in the claim file?</p> <p>21 A. No.</p> <p>22 Q. No documents have been brought to your attention in 23 the past two days that suggest that?</p> <p>24 A. No.</p> <p>25 Q. Correct?</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. Was it the higher dollar claims that they would focus 2 on?</p> <p>3 A. Perhaps it might be that or the length of time in 4 which benefits are being paid or a lot of times just a 5 follow-up as to maybe additional information might be 6 needed. They had their own criteria which they didn't 7 particularly discuss with us.</p> <p>8 Q. So is it your memory then that Employers Reinsurance 9 came in and performed some general audit of some 10 selected claim files and determined that the Kearney 11 claim was one in which DMS's assistance may be of 12 value?</p> <p>13 A. Yes.</p> <p>14 Q. Okay.</p> <p>15 A. And I recall that only because of the -- I believe the 16 correspondence, which my major correspondence with 17 Employers Re was sending them a copy of the bill from 18 DMS because they were footing part of the bill. That 19 was one of my major concerns as far as they were 20 concerned.</p> <p>21 Q. Was DMS expensive?</p> <p>22 A. I do not recall what they charged.</p> <p>23 Q. Did you put those correspondence in the claim file or 24 does that not go in the claim file?</p> <p>25 A. It should be in the claim file.</p>	<p style="text-align: right;">Page 13</p> <p>1 A. Yes, that's correct.</p> <p>2 Q. See, I always ask negative questions. So then 3 ultimately you referred not just Mr. Kearney's claim 4 but two other claims to DMS in 1997?</p> <p>5 A. I do not recall specifically any other references.</p> <p>6 Q. Mr. Shelton, I'm going to mark an exhibit which is the 7 principal correspondence in the claim file that 8 appears to have been directed to you or authored by 9 you and it's maybe 30 or 40 pages. I'd like for you 10 to kind of glance through the whole thing before I 11 start going through those with you.</p> <p>12 MS. FARABOW: What's the exhibit number?</p> <p>13 MR. ROBERTS: Oh, I'm sorry. It will be 23.</p> <p>14 (Defendant's Exhibit No. 23 was marked for 15 identification by Mr. Roberts.)</p> <p>16 Q. (Indicating)</p> <p>17 A. (Witness reviews document)</p> <p>18 Q. Okay. Thank you for taking the time to review that. 19 I know it's a lot of material. But did you see that 20 I've tried to put into chronological order the 21 correspondence in the claims file that --</p> <p>22 A. Yes.</p> <p>23 Q. -- has your name on it somewhere or abouts?</p> <p>24 A. Yes.</p> <p>25 Q. Do you have any memory of any other correspondence you</p>

4 (Pages 10 to 13)

<p style="text-align: right;">Page 14</p> <p>1 might have had that isn't contained in here?</p> <p>2 A. No, I do not. This is primarily my period of correspondence.</p> <p>3 Q. Okay. When letters are sent to policyholders are received, what happens to them?</p> <p>4 A. They become part of the file.</p> <p>5 Q. Okay. Where's the file maintained?</p> <p>6 A. In our office in the claim file. It is part of the claim file. There is no separate file for correspondence or benefit papers.</p> <p>7 Q. You just put matters in as they come in?</p> <p>8 A. Yes.</p> <p>9 Q. Is there a central repository for all the claim files of all the claimants?</p> <p>10 A. Yes.</p> <p>11 Q. Would you as a claim analyst or the manager or the Vice President maintain claim files in your actual office?</p> <p>12 A. No. These files -- once I'm through with them, they'd be put in an outbox, go back to file and filed in numerical order according to policy number.</p> <p>13 Q. Okay.</p> <p>14 A. There's a central file.</p> <p>15 Q. So if you received a telephone call from a claimant, would you take notes that then get put in the claim</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. Anything kept separate?</p> <p>2 A. No, not that I know of.</p> <p>3 Q. And no shadow file where you keep things that you're working on?</p> <p>4 A. No. Our intent was that whoever looked at that file knew everything that was happening on it.</p> <p>5 Q. Okay.</p> <p>6 A. So we never -- we did not have separate files on those.</p> <p>7 Q. Okay. Let's work our way through this, if we could.</p> <p>8 A. Okay.</p> <p>9 Q. The first page, August '93, appears to be from Mr. Kearney to -- I think it's you?</p> <p>10 A. Yes.</p> <p>11 Q. But then you didn't have direct responsibility for the claim for a period of time; that fell to Mr. Maxwell?</p> <p>12 A. Yes, that is correct.</p> <p>13 Q. Okay.</p> <p>14 A. I would have just -- this would have been matched with the file and it would have just been passed on to whoever was handling it.</p> <p>15 Q. And then September '93, another cover letter. The third page -- let me make sure for the record we all have the same thing. The first page is 2694. The second page is 2691.</p>
<p style="text-align: right;">Page 15</p> <p>1 file?</p> <p>2 A. Yes. Normally we'd call for the file so that I'd have it there for the conversation.</p> <p>3 Q. Okay. So if you get a call from -- the procedure generally was, if you got a call from a claimant out of the blue, you'd ask your assistant to gather for you the claim file and bring it to you so you could speak intelligently on the phone call?</p> <p>4 A. Yes.</p> <p>5 Q. Would you take notes during the phone call?</p> <p>6 A. Normally, yes.</p> <p>7 Q. And then put those in the claim file?</p> <p>8 A. Yeah, unless it was something that just -- asking did you get the claim, get my correspondence or something, then I wouldn't make a note of that perhaps.</p> <p>9 Q. Material discussions you would?</p> <p>10 A. Yeah.</p> <p>11 Q. If you had material discussions with persons other than the claimant about the claimant's claim, would those notes also, too, go in the claim file?</p> <p>12 A. Yes.</p> <p>13 Q. Would you maintain separately any copies of any letters received other than the letter being received being put in the claim file?</p> <p>14 A. No.</p>	<p style="text-align: right;">Page 17</p> <p>1 The third page, which is 2690, is a letter from you to Mr. Kearney dated September 8, 1993, regarding the two policies, and you say in the second paragraph, "Since the residual benefit is not considered to be total disability, we would not be able to apply the waiver of premium to your policy. This provisions applies only to a total disability under the regular benefits of the policy." Did I read that correctly?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Had Mr. Kearney questioned whether or not he was entitled to the waiver on residual disability?</p> <p>4 A. He apparently had -- based on the first paragraph, he apparently had asked about the waiver of premium.</p> <p>5 Q. I'm going to show you --</p> <p>6 A. I do not know where that letter is. I don't see it here.</p> <p>7 Q. Okay. Let me show you the policy and the rider. The six pages of the policy is Exhibit 3, and Exhibit 4 are the three riders that Mr. Kearney happened to purchase.</p> <p>8 A. Okay.</p> <p>9 Q. Could you identify for me in either one of those documents where it says that if you're on residual disability, you don't get waiver of premium?</p>

Page 18	Page 20
1 A. The policy itself under the waiver of premium 2 provision says if you are totally disabled for a 3 continuous period of at least three months, 4 Jefferson-Pilot will pay -- will waive the premiums on 5 that. I don't believe a residual provision, which is 6 a separate entity, says anything about waiver of 7 premium. 8 Q. You're right. The residual disability rider doesn't 9 say anything about waiver of premium. 10 A. It applies only to the basic policy. 11 Q. Okay. 12 A. What we call the basic policy. 13 Q. Okay. This basic policy doesn't say anything about 14 residual disability, does it? 15 A. No. 16 Q. I asked you a negative question again. There is no 17 reference whatsoever to residual disability in the 18 basic policy? 19 A. That's correct. 20 Q. And a lot of the definitions in the basic policy, 21 although they're couched in terms of total disability, 22 must be applied in cases of residual disability; would 23 you agree with me? For example, the elimination 24 period, it's defined in terms of total disability, but 25 it applies to residual disability, doesn't it?	1 need to go to the policy and the schedule and use the 2 definition that is provided for total disability; 3 isn't that true? That's a long question. If you want 4 it read back while you look at those documents, we can 5 do that. 6 THE WITNESS: If you would read that question 7 back. 8 MR. ROBERTS: Thank you. 9 (The last question was read back by the court 10 reporter.) 11 A. I don't believe that's true. 12 Q. Okay. Let's work our way through it then, okay? Turn 13 to the policy, page 3, maximum benefit period. It's 14 defined in terms of total disability, correct? 15 A. Uh-huh. 16 Q. Correct? 17 A. Yes. Total disability period is under the 18 definitions. 19 Q. Okay. And it defines it in terms of total disability? 20 A. Yes. 21 Q. Turn to the residual disability rider. 22 A. Okay. 23 Q. And this provides that Jefferson-Pilot will pay 24 residual disability until the combination of total 25 disability and residual disability equal the maximum
Page 19	Page 21
1 A. That is in the schedule of benefits. 2 Q. Correct. But the definition -- we'll get to the 3 schedule in a second. But the schedule -- excuse me, 4 the basic or core policy, whatever you called it, the 5 definition -- there's a definition for elimination 6 period and that applies to residual disability, too, 7 doesn't it? There's no separate definition for 8 elimination period for residual disability? 9 A. The residual disability rider makes reference to -- it 10 says benefits will begin the next day after the end of 11 the elimination period shown in the schedule, which is 12 in the policy. 13 Q. Okay. Turn to the schedule. Where does it define the 14 residual disability elimination period in the 15 schedule? 16 A. It does not. 17 Q. Okay. So to determine the residual disability 18 elimination period, you have to use the total 19 disability elimination period definition; is that 20 right? 21 A. That's correct, yes. 22 Q. And the same is true with regard to the definition for 23 maximum benefit period, there is no residual 24 disability definition of maximum benefit period; 25 rather to determine the maximum benefit period, you	1 benefit period, right? 2 A. Yes. 3 Q. And then it references the schedule? 4 A. I'm not sure I understand that question. 5 Q. The paragraph in the second column of the residual 6 disability rider says that during a period of residual 7 disability, Jefferson-Pilot will continue to pay the 8 residual disability monthly benefit for each month you 9 are residually disabled until the combination of total 10 disability and residual disability benefits equal the 11 maximum benefit period, and the maximum benefit period 12 is capitalized, which means it's a defined term. Do 13 you see anywhere where there is an independent 14 definition for maximum benefit period for residual 15 disability that's different or separate from the total 16 disability definition? 17 MR. ELLIS: Objection, incomplete. 18 Q. In attempting to answer the question, you referenced 19 the schedule. Do you see on the schedule a maximum 20 benefit period for residual disability? 21 A. Based on what this says here, the maximum benefit 22 period is capitalized, which means it is this here, 23 which would be applicable (Indicating). 24 Q. You're pointing to the schedule? 25 A. This is in the schedule of benefits.

6 (Pages 18 to 21)

Page 22 1 Q. Right. And what you're saying is applicable is the 2 maximum benefit period that's applicable for total 3 disability? What you're saying is, that's applicable 4 for residual disability, correct? 5 A. To age 65. 6 Q. Well, it's lifetime if you get disabled prior to 45, 7 correct? 8 A. It appears so. 9 Q. Okay. And that's the definition of maximum benefit 10 period you need to use for residual disability, 11 correct? 12 A. It appears that way. 13 Q. Okay. Let's talk about another example. The 14 definition of monthly benefit, if you can find it in 15 the policy on page 3. 16 A. I have it. 17 Q. Okay. It's the amount shown in the schedule or 18 one-thirtieth, et cetera, for a partial month? 19 A. Yes. 20 Q. It doesn't say anything about residual disability? 21 A. No. 22 Q. Is there a definition for the monthly benefit for 23 residual disability anywhere? To answer that 24 question, you're looking at the rider. Doesn't the 25 rider state that it's the amount shown on the	Page 24 1 to the schedule. 2 A. Okay. 3 Q. How is the monthly benefit for residual disability 4 defined on the schedule? 5 A. It is not. 6 Q. Well, it's defined under total disability and so you 7 must use it to determine what residual disability 8 monthly benefit is, correct? 9 A. But there's also a calculation that has to be done. 10 Q. Correct, for residual disability monthly benefit? 11 A. Yes. 12 Q. I'm talking about the term -- the paragraph above that 13 for the defined term "Monthly Benefit." That's what 14 we're talking about right now, okay? To determine 15 what that means in the context of residual disability, 16 the rider says look at the schedule? 17 A. Yes. 18 Q. Okay. And the schedule doesn't say anything about 19 monthly benefit residual disability; it only talks in 20 the context of total disability, right? 21 A. That's the way it appears, yes. 22 Q. Okay. So I've just pointed out for you three 23 examples: elimination period, maximum benefit period, 24 and monthly benefit. Those are three pretty important 25 aspects to a disability policy, right?
Page 23 1 schedule? 2 MR. ELLIS: Let him answer one question at a 3 time, and don't throw me the finger again. 4 MR. ROBERTS: What are you talking about? 5 A. Question again, please. 6 Q. The residual disability rider -- you went from the 7 policy and I asked you where is the residual 8 disability definition for monthly benefit, and you 9 turned to residual disability rider and it says 10 monthly benefit is the amount shown in the schedule, 11 right? Towards the bottom of the first column, the 12 residual disability rider, there's a paragraph that 13 says Residual Disability Monthly Benefit, do you see 14 that? 15 A. I'm looking at that. 16 Q. The sentence above that says "'Monthly Benefit' is the 17 amount shown in the schedule as such." That's the 18 language of the rider. Can you turn to -- we need 19 then to turn to the schedule to determine what the 20 residual disability monthly benefit definition is, 21 right? 22 A. The monthly benefit is the amount shown in the 23 schedule as such. 24 Q. Okay. So we went from the policy to the rider and the 25 rider tells us to go to the schedule. Let's go back	Page 25 1 A. Yes. 2 Q. Okay. With those three examples, there is no 3 definition -- independent residual disability 4 definition for those three items; rather the policy, 5 the rider, and the schedule all require that you use 6 the total disability definition for those items, 7 right? 8 A. It refers to the schedule which has those items there. 9 Q. In the context of total disability only, right? 10 A. Yes. 11 Q. Okay. Why is the waiver of premium different -- just 12 because the definition of waiver of premium says total 13 disability, where is it that says elimination period, 14 maximum benefit period, and monthly benefit all are 15 defined in terms of total disability but they apply to 16 residual disability -- where does it say that even 17 though those three apply to residual disability, 18 waiver of premium doesn't? 19 A. The increase in benefits on benefit provisions 20 requires that you receive benefits for total 21 disability for twelve months -- no, I'm sorry. 22 Q. We're talking about -- 23 A. I'm looking at something else, I'm sorry. 24 Q. -- premium waiver. Where is it that Mr. Kearney was 25 advised that those three examples we just talked about

7 (Pages 22 to 25)

<p>1 defined in terms of total disability apply to residual 2 disability, but waiver of premium doesn't? 3 A. The waiver of premium requires that you be totally 4 disabled for at least three months and that the waiver 5 will apply at that time. 6 Q. Okay. Where is the definition for waiver of premium 7 under -- 8 A. That's in the policy. 9 Q. Okay. Where does it say that you use the total 10 disability definitions of elimination period, maximum 11 benefit period, and monthly benefit under residual 12 disability, but you don't use the definition of waiver 13 of premium for total disability under residual 14 disability? 15 A. Well, it specifically states that it is applicable for 16 total disability. 17 Q. But it also specifically states -- 18 A. Not residual disability. 19 Q. Okay. But the elimination period also specifically 20 states it only applies to total disability. It 21 doesn't say residual disability. 22 A. But it refers you to the schedule which is in the 23 policy as applying to the residual. 24 Q. The rider refers you to the schedule -- 25 A. Yes.</p>	<p>Page 26 1 75 percent, the full benefit for total disability will 2 be payable." Do you see that? 3 A. Yes. 4 Q. So if a residual disability claimant has greater than 5 75 percent loss, what that example says is that you're 6 entitled to the full benefit that someone on total 7 disability would get, right? 8 A. Pertaining to the dollar amount. 9 Q. Where does it say it's pertaining to the dollar 10 amount? 11 A. Well, this is -- that's what the intent is. 12 Q. Well, where does it say to the policyholder what the 13 intent is? I mean, that's what you determine intent 14 to be, but you just told me that the waiver of 15 premium, which is a dollar amount, it's a monetary 16 savings, that's one of the benefits that encompassed 17 the full benefits of total disability, right? 18 A. Yes. 19 Q. Okay. So if it's one of the benefits that constitute 20 part of the full benefits of total disability, under 21 this proposal you would agree with me that there is a 22 waiver of premium on residual disability? 23 A. Well -- 24 MR. ELLIS: Objection. 25 A. But the --</p>
<p>1 Q. -- right? The rider doesn't refer you to anything 2 about waiver of premium, does it? 3 A. No. 4 Q. Okay. It's silent, right -- 5 A. (Witness nods head) 6 Q. -- about whether or not premiums are waived during 7 residual disability, it is silent? 8 A. I believe that is true. 9 Q. Okay. Can you turn to Exhibit -- so the waiver of 10 premium, that's in essence a benefit you get if you're 11 on total disability? 12 A. Yes. 13 Q. Okay. 14 A. That's correct. 15 Q. I'm handing you Exhibit 14, which is the proposal that 16 Mr. Kearney received. Can you turn to page 5, please, 17 and page 5 provides that -- do you see that example on 18 page 5 down -- about two-thirds of the way down 19 there's a paragraph that starts Example? 20 A. I don't see -- oh, yes, yes, okay. 21 Q. Okay. Towards the end of that paragraph it says -- 22 it's talking about residual disability. This is an 23 example of someone that may potentially be on residual 24 disability. It's a hypothetical in the proposal. The 25 end of it says, "If the loss of earnings is at least</p>	<p>Page 27 1 Q. You can answer. His objection doesn't stop you from 2 answering. 3 A. Repeat the question again, I'm sorry. 4 Q. Okay. You and I agreed that a premium waiver isn't 5 money going to the policyholder, it's money the 6 policyholder saves, so in essence it is a monetary 7 benefit to the policyholder, right? 8 A. Yes, that's correct. 9 Q. Okay. And it's a monetary benefit to the policyholder 10 in the event of total disability, right? 11 A. Yes. 12 Q. And there's other benefits that come with total 13 disability, correct? 14 A. Yes. 15 Q. So if you're talking about the full benefit for total 16 disability, you capture all of those benefits, right? 17 A. No, I don't think the intent is to capture all of the 18 benefits. 19 Q. Okay. Where does it say in the proposal, the policy, 20 or any rider that when we talk about the full benefits 21 of total disability, we're talking about something 22 less than the full benefits of total disability? 23 MR. ELLIS: Can I have that back. I just 24 want to know whether he used a singular or plural. 25 (The last question was read back by the court</p>

<p style="text-align: right;">Page 30</p> <p>1 reporter.)</p> <p>2 MR. ELLIS: Benefits plural, thank you.</p> <p>3 MR. ROBERTS: Objection, coaching of the</p> <p>4 witness, and he does it in every deposition. He's</p> <p>5 unbelievable.</p> <p>6 Q. Okay. You've heard the question again, Mr. Shelton,</p> <p>7 and the question is this: You and I agree that waiver</p> <p>8 of premium is one of the benefits of total disability,</p> <p>9 and there are others?</p> <p>10 A. (Witness nods head)</p> <p>11 Q. And my question to you is, where does it tell the</p> <p>12 policyholder that even though you get the full benefit</p> <p>13 of total disability if you have greater than</p> <p>14 75 percent loss, that doesn't include waiver of</p> <p>15 premium?</p> <p>16 A. Well --</p> <p>17 Q. Where does it tell the policyholder?</p> <p>18 A. Well, the statement itself is applying to the total</p> <p>19 disability benefit. The monthly benefit --</p> <p>20 Q. Where does it say that?</p> <p>21 A. Well, it only says the full benefit. It doesn't say</p> <p>22 benefits of the policy.</p> <p>23 Q. Okay. The policy defines the monetary benefit of</p> <p>24 total disability as the "Monthly Benefit." The</p> <p>25 proposal doesn't say monthly benefit. It says the</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Where on there on the schedule does it say that</p> <p>3 waiver of premium is a benefit for total disability</p> <p>4 but not one of the full benefits of total disability</p> <p>5 that the proposal talks about?</p> <p>6 MR. ELLIS: Objection to form.</p> <p>7 A. The only thing I can say is that, you know, the</p> <p>8 definition is in the policy. It provides that it is</p> <p>9 due only for the total disability.</p> <p>10 Q. But you and I agree that there's other definitions in</p> <p>11 the policy that only apply to total disability, but in</p> <p>12 fact they're used to define residual disability?</p> <p>13 A. But it refers to something specifically in the</p> <p>14 schedule, like the elimination period or the monthly</p> <p>15 benefit. Those are specifically in the schedule. The</p> <p>16 waiver of premium is not shown on the schedule.</p> <p>17 Q. Okay. So where do you tell the policyholder that</p> <p>18 those things that we actually refer to in the residual</p> <p>19 disability rider that we don't tell you we use the</p> <p>20 total disability definition, those do apply, but those</p> <p>21 things that we're silent on don't apply?</p> <p>22 A. I don't know, and of course, we do not use proposal --</p> <p>23 very seldom did we ever get a proposal for the file.</p> <p>24 Q. How difficult would it have been to put the following</p> <p>25 sentence on the proposal, the policy, and the residual</p>
<p style="text-align: right;">Page 31</p> <p>1 full benefit, not a defined term, right? Am I</p> <p>2 correct?</p> <p>3 A. It says the full benefit for total disability will be</p> <p>4 payable.</p> <p>5 Q. Okay. Where does it tell the policyholder that only</p> <p>6 means the monthly benefit check and it doesn't mean</p> <p>7 waiver of premium?</p> <p>8 A. Well, the schedule of benefits has all of these</p> <p>9 spelled out, you know. It doesn't have the Social</p> <p>10 Security and the residual as all as part of the top</p> <p>11 part of the policy. These are set up as --</p> <p>12 Q. They're additional if you buy them?</p> <p>13 A. Yeah, exactly.</p> <p>14 Q. Let's turn to the schedule. Let's turn to the</p> <p>15 schedule.</p> <p>16 A. Yeah.</p> <p>17 Q. Okay. The schedule has a couple things at the top</p> <p>18 that are your benefits for total disability. You get</p> <p>19 the monthly benefit, you get the elimination period,</p> <p>20 you get the maximum benefit period, right?</p> <p>21 A. Yes.</p> <p>22 Q. And then if you purchase these additional benefit,</p> <p>23 which Mr. Kearney did, then there's potential Social</p> <p>24 Security Supplement benefit, residual disability, and</p> <p>25 cost of living increase, right?</p>	<p style="text-align: right;">Page 33</p> <p>1 disability rider? How difficult would it have been to</p> <p>2 say, You are not entitled to waiver of premium on</p> <p>3 residual disability, period, in all caps in bold?</p> <p>4 Would it have been very difficult for Jefferson-Pilot</p> <p>5 to do that?</p> <p>6 A. If when they drew up the contract it had been thought</p> <p>7 of or felt important, then perhaps it would have, I</p> <p>8 don't know.</p> <p>9 Q. All right. Let me show you Exhibit 5. This is a</p> <p>10 Residual Disability Rider that Jefferson-Pilot</p> <p>11 prepared after it sold policies to Mr. Kearney, and if</p> <p>12 you turn to page 2, can you tell me whether or not</p> <p>13 Jefferson-Pilot in 1992 was able to expressly state</p> <p>14 whether or not there was a waiver of premium on</p> <p>15 residual disability?</p> <p>16 A. Is this the same policy?</p> <p>17 MR. ELLIS: No.</p> <p>18 Q. No, it's a Jefferson-Pilot Residual Disability Rider</p> <p>19 where Jefferson-Pilot's people who create these things</p> <p>20 came up with the idea that it would be good to express</p> <p>21 explicitly whether or not there's a waiver of premium</p> <p>22 on residual disability.</p> <p>23 MR. ELLIS: Objection.</p> <p>24 A. Well --</p> <p>25 Q. Sir, is there a discussion about waiver of premium on</p>

9 (Pages 30 to 33)

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<p style="text-align: right;">Page 34</p> <p>1 residual disability?</p> <p>2 A. I think what we have to be careful about, there are</p> <p>3 different policies.</p> <p>4 Q. Okay.</p> <p>5 A. This may very well have applied to 571, which is a</p> <p>6 different policy from --</p> <p>7 Q. There's no doubt about that. But my point is, the</p> <p>8 people authoring these things at Jefferson-Pilot had</p> <p>9 the skill to define in unexplicit terms whether or not</p> <p>10 there's waiver of premium under residual disability.</p> <p>11 Can you confirm that for me by turning to page 2.</p> <p>12 A. This does not have a number, doesn't have a reference</p> <p>13 to this form right here, so I assume it is part of</p> <p>14 this form.</p> <p>15 Q. Thank you for assuming that. Now, can you answer my</p> <p>16 question.</p> <p>17 A. The definition is there.</p> <p>18 Q. And what does it say?</p> <p>19 A. Waiver of premium.</p> <p>20 Q. What does it say?</p> <p>21 A. "If you become eligible for a residual disability</p> <p>22 benefit for a continuous period of at least three</p> <p>23 months or immediately following a period of total</p> <p>24 disability during which premiums have been waived, we</p> <p>25 will waive premiums that come during the disability."</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. Okay.</p> <p>2 A. If it was intended to be.</p> <p>3 Q. Wouldn't it have made sense -- if the insurance</p> <p>4 company wants to tell the policyholder what the</p> <p>5 insurance company's intentions are, wouldn't it be</p> <p>6 better to tell explicitly in the residual disability</p> <p>7 rider?</p> <p>8 A. Well, the policy is created to tell you what you have.</p> <p>9 Q. Okay.</p> <p>10 A. It's not created to tell you what you don't have.</p> <p>11 Q. Oh, now, come on. Every insurance contract I've ever</p> <p>12 seen has a specific lengthy provision of exclusions</p> <p>13 and limitations --</p> <p>14 MR. ELLIS: Objection, argumentative.</p> <p>15 Q. -- right?</p> <p>16 A. Well, it's possible.</p> <p>17 Q. Possible? You've been working for an insurance</p> <p>18 company for 38 years. You know that every policy has</p> <p>19 a certain section that says exclusions and limitations</p> <p>20 and then the laundry list; if these things happen, you</p> <p>21 continue get benefits, boom, boom, boom, boom, right,</p> <p>22 and there is in this policy as well.</p> <p>23 A. Well, this residual rider which is a part of this</p> <p>24 policy states that benefits -- no --</p> <p>25 Q. There's a Limitations section on this rider, isn't</p>
<p style="text-align: right;">Page 35</p> <p>1 Q. Okay. How difficult would it have been for</p> <p>2 Jefferson-Pilot to say on Mr. Kearney's purchased</p> <p>3 residual disability rider that was created before this</p> <p>4 one was created that you don't get waiver of premium?</p> <p>5 How difficult would that have been?</p> <p>6 MR. ELLIS: Objection.</p> <p>7 A. Well, these are marketable items. You pay more for</p> <p>8 these provisions.</p> <p>9 Q. Okay.</p> <p>10 A. I don't know but what this residual disability rider</p> <p>11 was on a more expensive policy.</p> <p>12 Q. Very well. How do you know that?</p> <p>13 A. I don't know that, but I just know it's not the same</p> <p>14 as this and this is the next in line --</p> <p>15 Q. Can you answer my question. How difficult would it</p> <p>16 have been for Jefferson-Pilot to tell someone from</p> <p>17 whom it gets checks every month, you don't get waiver</p> <p>18 of premium under this residual disability rider? How</p> <p>19 difficult would it have been?</p> <p>20 A. Well, we told him in a letter.</p> <p>21 Q. Okay. After he purchased the policy. How difficult</p> <p>22 would it have been to include on the rider, you don't</p> <p>23 get waiver of premium? Would it have been difficult,</p> <p>24 sir?</p> <p>25 A. I don't think so.</p>	<p style="text-align: right;">Page 37</p> <p>1 there?</p> <p>2 A. Yes.</p> <p>3 Q. And the policy has an Exclusions section, right?</p> <p>4 A. Yes.</p> <p>5 Q. So the company does go to an effort to tell the</p> <p>6 policyholder when benefits don't apply, doesn't it?</p> <p>7 A. Yes.</p> <p>8 Q. Thank you. Let's go back to Exhibit 23.</p> <p>9 A. Okay.</p> <p>10 Q. Mr. Kearney was obviously confused about whether or</p> <p>11 not there was a waiver of premium, because he brought</p> <p>12 the issue up to you, right?</p> <p>13 A. Yes, based on my response September 8.</p> <p>14 Q. That's what you conclude?</p> <p>15 A. Yes.</p> <p>16 Q. Thank you. The fourth page is 2741, then 2743, 2729,</p> <p>17 2901, 2904, and then I want to discuss with you 2892.</p> <p>18 A. Okay.</p> <p>19 Q. Let me continue with what the pages are. 2891, 2886,</p> <p>20 2880, 2875, and let's stop at 2874, which is the</p> <p>21 letter to you from Disability Management dated October</p> <p>22 29, 1997.</p> <p>23 A. Okay.</p> <p>24 Q. Okay. The October 29, 1997 letter has some</p> <p>25 information redacted there. There's some graph paper</p>

<p style="text-align: right;">Page 38</p> <p>1 or lined paper that's been --</p> <p>2 A. What number is that?</p> <p>3 Q. 2874, October 29, '97.</p> <p>4 A. Okay.</p> <p>5 Q. This is a letter you received or was sent to you the 6 end of October '97 from a gentleman named Todd Ditmar. 7 Do you understand him to have been a disability claim 8 consultant at Disability Management Services?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Did you have some regular contact with him in 11 the '97, '98, '99 time frame?</p> <p>12 A. I believe I did.</p> <p>13 Q. Okay. You had referred to him three separate files: 14 Mr. Kearney's file, Gregor Kohn's file, and Felia 15 Rampersad's file, right?</p> <p>16 A. Yes.</p> <p>17 Q. And why did you refer Mr. Kohn and Ms. Rampersad's 18 files to DMS for review?</p> <p>19 A. I do not recall.</p> <p>20 Q. You don't recall what the issues were related to those 21 files?</p> <p>22 A. No, I do not.</p> <p>23 Q. Is Ms. Rampersad located in Florida?</p> <p>24 A. I don't recall.</p> <p>25 Q. Okay. Are those the two people's names who you</p>	<p style="text-align: right;">Page 40</p> <p>1 Q. Okay. You wrote it to the attention of John Anderson?</p> <p>2 A. Yeah.</p> <p>3 Q. Did you understand him to be an equity owner of DMS 4 and head of the claims --</p> <p>5 A. Did not specifically know him. I'm sure I was advised 6 by Employers Re to -- that's who I'd sent it to, 7 because I -- you know, I did not know any of these 8 folks at DMS.</p> <p>9 Q. Okay. Did you then subsequently have conversations 10 with Mr. Anderson about Mr. Kearney's claim?</p> <p>11 A. I do not specifically remember any.</p> <p>12 Q. Okay. 2886 dated September 12, '97, the third 13 paragraph, Todd Ditmar writes to you, "As Mr. Kearney 14 has refused Jefferson-Pilot's request for an 15 independent financial audit, we would request that you 16 forward a copy of Mr. Kearney's policy to us so that 17 we may have it reviewed by our legal counsel. It 18 would seem that an audit would be the only true way to 19 measure and objectify his reported loss of income."</p> <p>20 Mr. Kearney communicated to you there was a 21 specific reason why he did not desire for 22 Jefferson-Pilot or Jefferson-Pilot's agents to contact 23 the people he worked for and tell them that he 24 suffered from chronic severe depression, didn't he?</p> <p>25 A. I do not recall specifically, but I would think that</p>
<p style="text-align: right;">Page 39</p> <p>1 blacked out of 2892 or someone blacked out with 2892? 2 It's July 8, '97, if you want to figure it out that 3 way.</p> <p>4 A. Well, it's been blacked out. I don't know whether I 5 did that or not.</p> <p>6 Q. Did you refer more than three claims to DMS in that 7 summer '97 time frame?</p> <p>8 A. I do not recall.</p> <p>9 Q. In the second paragraph you write, "These are cases 10 that you are going to investigate for us to see what 11 can be done either to settle these in an equitable 12 manner to both the reinsurer and to Jefferson-Pilot or 13 to give us further advice on where to proceed."</p> <p>14 Did you ever suggest to DMS that they might 15 want to think about settling or resolving them in an 16 equitable manner to the policyholder?</p> <p>17 A. Well, I think -- this doesn't say that per se, but the 18 intent would always be something that the insured 19 is -- the policyholder is agreeable to and is 20 equitable to everyone involved.</p> <p>21 Q. Did you have phone conversations with Mr. Anderson? 22 This letter that you wrote on July 8, '97, is the 23 first letter of any communication you had with DMS, I 24 assume, correct?</p> <p>25 A. Apparently so.</p>	<p style="text-align: right;">Page 41</p> <p>1 would be a logical request.</p> <p>2 Q. Okay. And then Mr. Ditmar, he's someone you did have 3 frequent communications with in the '97 --</p> <p>4 A. Apparently he was handling this particular case.</p> <p>5 Q. He worked for Mr. Anderson?</p> <p>6 A. Apparently.</p> <p>7 Q. Okay. He requested that you send him a copy of the 8 policy so their lawyers could take a look at it to 9 determine what the rights were, right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And then the next page dated September 18, 12 1997, document 2880, you sent him the policy, right?</p> <p>13 A. Yes.</p> <p>14 Q. And if he did what he said he was going to do, he was 15 going to have his lawyers at DMS who this is what they 16 do, administer claims, determine what the rights are 17 in the policy, right?</p> <p>18 A. Yes.</p> <p>19 Q. And Mr. Kearney's payments didn't change; this alleged 20 error wasn't disclosed or discovered for four more 21 years, right?</p> <p>22 A. Apparently.</p> <p>23 MR. ELLIS: If can we take a break so I can 24 check out.</p> <p>25 MR. ROBERTS: Can we proceed while you're</p>

<p>1 doing that?</p> <p>2 MR. ELLIS: No.</p> <p>3 MR. ROBERTS: He can handle himself.</p> <p>4 MR. ELLIS: I'm sure he can.</p> <p>5 MR. ROBERTS: We'll tell you what happened.</p> <p>6 You'll get your transcript.</p> <p>7 MR. ELLIS: I appreciate that.</p> <p>8 (Brief recess)</p> <p>9 Q. Mr. Shelton, can you turn to December 18, 1997.</p> <p>10 A. Uh-huh, okay.</p> <p>11 Q. Bates 2861. Have you got that?</p> <p>12 A. 2861.</p> <p>13 Q. After you referred the claim and sent a copy of the policy to DMS in the summer of '97, was DMS ghostwriting the letters that you sent to Mr. Kearney?</p> <p>14 A. No.</p> <p>15 Q. Any of them?</p> <p>16 A. I don't believe so.</p> <p>17 Q. Okay. In the second paragraph of your letter of December 18, 1997, you're responding to questions concerning whether or not there was some five-year limitation to Mr. Kearney's benefits. In the second paragraph you say, "During the first five years you were paid total disability benefits and benefits under the residual rider of your policy."</p>	<p>Page 42</p> <p>1 A. No, I do not. Normally we would not except, you know -- I don't know.</p> <p>2 Q. Was there a normal with regard to DMS? I mean, was there a normal practice with regard to claims you shared administration on with DMS?</p> <p>3 A. No.</p> <p>4 Q. How many claims did they receive?</p> <p>5 A. I think you --</p> <p>6 Q. At least three?</p> <p>7 A. Yeah. Those are the only three that I know of.</p> <p>8 Q. Are you mindful that at the end of '99 they got many, many, many more?</p> <p>9 A. I'd heard that they've started processing claims.</p> <p>10 Q. At the time of your retirement that's what you understood?</p> <p>11 A. Yeah, after I retired.</p> <p>12 Q. At any point in time prior to your retirement was it suggested by anybody with whom you had discussion that Mr. Kearney be sent for an IME?</p> <p>13 A. I don't recall specifically.</p> <p>14 Q. Did you ever request surveillance of Mr. Kearney or are you mindful of any surveillance being sought?</p> <p>15 A. I am not, but there's always that possibility.</p> <p>16 Q. Possibility that someone in your staff did that or didn't know it or the possibility that DMS did it?</p>
<p>1 A. Uh-huh.</p> <p>2 Q. Did you go back and look at the claim file and the policy before writing a letter such as this? Would that have been your practice?</p> <p>3 A. Yes, normally that would be.</p> <p>4 Q. Okay. The next page 2856 is a fax cover page from you to Mr. Mills. Are you sending him a draft of the December 18 letter or the final version of the letter, do you know?</p> <p>5 A. I do not know. Same date, I don't know why I wouldn't just send him a copy of it.</p> <p>6 Q. Well, because the next page is 2855 and Todd Ditmar sends you a fax cover page plus two and asks you to call and discuss, and then there's essentially the same letter redrafted dated December 19. It looks to me like you drafted a letter, faxed it there, they faxed it back with some additions.</p> <p>7 A. I don't recall if this was just sent to them for review or whether it actually went out to Mr. Kearney.</p> <p>8 Q. My suspicion -- I don't know, I wasn't a fact witness, but my suspicion is logical, though, isn't it?</p> <p>9 A. Seems -- it does seem.</p> <p>10 Q. Do you recall there being some standing order or preference that you share with DMS substantive letters with Mr. Kearney before they go out?</p>	<p>Page 43</p> <p>1 A. Well, surveillance usually just requires -- if the policy there was some question that surveillance might be important, then we would do that, but we could do that. Whether we did it in his case, I don't know. It may have been done by DMS, I don't know.</p> <p>2 Q. Secret surveillance?</p> <p>3 A. Usually they are.</p> <p>4 Q. 2991, which is January 13?</p> <p>5 A. Okay.</p> <p>6 Q. You're forwarding to Todd Ditmar a letter, two-page letter that you received from Mr. Kearney; is that right, the following pages 2987 and 2988?</p> <p>7 A. I don't know.</p> <p>8 Q. Okay.</p> <p>9 A. It doesn't reference that letter.</p> <p>10 Q. You sent Ditmar a three-page fax enclosing two, the fax cover plus two for his information?</p> <p>11 A. Yes.</p> <p>12 Q. And on that day there was a letter sent to you by Mr. Kearney, right?</p> <p>13 A. Yes, three pages sent to Mr. Kearney -- or to Mr. Ditmar. I noticed my fax transmittal was January 13, which is the same date as his, so I don't know specifically if that's what was sent to him.</p> <p>14 Q. He might have faxed his letter to you and you faxed it</p>

12 (Pages 42 to 45)

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1	on receipt?	1	aren't captured in your memo?
2	A. That's possible, yes.	2	A. I can't say. I would try to include everything in the
3	Q. At the third paragraph of that January 13 letter from	3	memo.
4	Mr. Kearney, the last three sentences say --	4	Q. Okay. But it's his memory within a week of the call
5	A. I'm sorry, what was that -- which one is this?	5	that you told him that residual disability benefits
6	Q. You're on the right page right now, the third	6	were subject to the same terms that are listed in the
7	paragraph.	7	total disability section. Are you saying that that
8	A. Okay.	8	never happened, you never said that to him?
9	Q. January 13 letter from Mr. Kearney. The last three	9	A. I can't -- no, I am not saying that, because I don't
10	sentences say, "Enclosed is a line card listing	10	know.
11	principals (blacked out) from '95. Jefferson-Pilot	11	Q. Okay. Earlier we saw a '93 question, 1993 question by
12	may put me in an unfavorable position with those	12	Mr. Kearney about whether or not waiver of premium
13	principals if you contact them. I have only two left	13	applies to him under residual disability and he raises
14	and the office in Toledo is closed."	14	the issue again here in 1998, right?
15	Was that the first time that Mr. Kearney had	15	A. Yes, he does, in the second paragraph, January 19, '98
16	expressed that concern, as far as you know?	16	letter.
17	A. No, I do not know.	17	Q. Your responsive letter on the next page, 2982, dated
18	Q. Turn to the letter dated January 19, '98, Bates 2990.	18	January 28, '98, the second paragraph, in response to
19	A. Okay.	19	his question about whether or not waiver of premium
20	Q. It's a letter from Mr. Kearney a week after you had	20	applies, you say, the middle of the second paragraph,
21	that conference where you did a -- do you see your	21	"In reviewing the waiver of premium provision, it
22	memo about your January 13 discussion with him?	22	appears that is applicable only if benefits are being
23	A. (No response)	23	paid under the total disability provision of the
24	Q. Sir?	24	policy."
25	A. I'm sorry?	25	You would agree with me that that is not
	Page 47		Page 49
1	Q. Do you see the memo -- as we go through the	1	necessarily an equivocal explicit statement that you
2	chronology, there was a January 13 memo from you to	2	know that they don't apply. You're suggesting that it
3	the file concerning a call you had with Mr. Kearney.	3	appears to you, correct?
4	A. Yes, here. This is 2992.	4	A. I used the word "appears."
5	Q. That's your memo, and then his letter, his two-page	5	Q. Okay.
6	letter also references that lengthy call you had on	6	A. It also states premiums would continue to be due,
7	the 13th, right?	7	so --
8	A. Yes.	8	Q. Because it's your assumption that it appears that that
9	Q. I guess the fax to Ditmar could have been either your	9	is the case?
10	memo or Chris's letter, since they're both two pages?	10	A. Yes.
11	A. Yeah.	11	Q. Okay. And you apologized to him for any misleading
12	Q. Both relate to January --	12	statement that may have been made in the January 13
13	A. I'm not sure what was forwarded.	13	phone call, right?
14	Q. Okay. And then a week later or on January 19, Mr.	14	A. Yes.
15	Kearney sends you a letter memorializing -- I'm	15	Q. What day of the month were benefits payable to Mr.
16	talking about 2990 now -- "When we talked last week,	16	Kearney?
17	you told me that residual disability benefits were	17	A. Not any specific day. We didn't have a specific day
18	subject to the same terms that are listed in the total	18	that we paid benefits. When the claim form came in,
19	disability section." Did you tell him that?	19	it was matched with the file and if everything is in
20	A. Not unless it was in my -- this memo to file.	20	order, it was paid at that time. He may have been
21	Q. If it's not in your two-page -- how long was the phone	21	paid generally in the same time of the month, but
22	call?	22	could have been different days, say, early in the
23	A. I can't say, must have been 10 to 15 minutes anyway.	23	month or -- but primarily it's when the claim form was
24	Q. Is there things you talked about that aren't -- were	24	received that we would start the process.
25	there words transferred between the two of you that	25	Q. How long does the process take? Would it be the same

<p>1 day?</p> <p>2 A. Very possibly. If everything is in order, it's just a</p> <p>3 matter of the examiner reviewing that and approving</p> <p>4 the payment and it could be within a day or two.</p> <p>5 Q. Do you date-stamp the receipt of the claim form or the</p> <p>6 supplemental statement?</p> <p>7 A. Yes.</p> <p>8 Q. They're all date-stamped?</p> <p>9 A. Yes.</p> <p>10 MR. ELLIS: Just for your information,</p> <p>11 Counsel, they date-stamp on the reverse side, which is</p> <p>12 why none of the copies of mine have them. They</p> <p>13 date-stamp their claims material on the reverse side.</p> <p>14 MR. ROBERTS: Were those produced?</p> <p>15 MR. ELLIS: Apparently it was never copied</p> <p>16 for either my copy of the claim file or yours. There</p> <p>17 were only one-sided copies and --</p> <p>18 MR. ROBERTS: Can something be undertaken to</p> <p>19 remedy that?</p> <p>20 MR. ELLIS: I can get the date-stamping for</p> <p>21 them if you like.</p> <p>22 MR. ROBERTS: Yes.</p> <p>23 Q. March 23, '98, which is a letter numbered 2956?</p> <p>24 A. Okay.</p> <p>25 Q. Now you're getting copies of letters that Mr. Kearney</p>	<p>Page 50</p> <p>1 DMS got involved to do that? You were performing</p> <p>2 other functions?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Was there any kind of written agreement that</p> <p>5 set forth --</p> <p>6 A. I think the -- I would think that the agreement was</p> <p>7 probably with Employers Re.</p> <p>8 Q. Between DMS and Employers Re?</p> <p>9 A. Yes. That would just be my guess, because I don't</p> <p>10 remember any contract that we had with them. They</p> <p>11 just asked us to send these forms to them.</p> <p>12 MR. ROBERTS: I believe that's been requested</p> <p>13 in the 34 discovery. Bill, is it going to be</p> <p>14 produced?</p> <p>15 MR. ELLIS: I'm not aware of any.</p> <p>16 MR. ROBERTS: Okay. Well, will you see if it</p> <p>17 exists or not?</p> <p>18 MR. ELLIS: Sure.</p> <p>19 Q. Did anyone ever tell you there was a written agreement</p> <p>20 between --</p> <p>21 A. No. I just know that DMS billed us directly and I</p> <p>22 would send a copy over to Employers Re to get their</p> <p>23 part of the charge.</p> <p>24 Q. There was no reference to a contract in the invoice or</p> <p>25 anything?</p>
<p>Page 51</p> <p>1 is dialoguing directly with DMS?</p> <p>2 A. Yes.</p> <p>3 Q. Was there a switch in the relationship at that point</p> <p>4 where he was dialoguing directly with them and just</p> <p>5 keeping you in the loop of comments?</p> <p>6 A. Mr. Kearney?</p> <p>7 Q. Right.</p> <p>8 A. I suspect at that point DMS had contacted him about</p> <p>9 whatever they were needing and he was just writing to</p> <p>10 them and then just keeping me informed.</p> <p>11 Q. Who was running the show on Kearney's claim from</p> <p>12 summer of '97 through the end of '99? Was it</p> <p>13 principally DMS or was it principally Jefferson-Pilot?</p> <p>14 A. No, we continued to make the payments. All they were</p> <p>15 doing was reviewing it.</p> <p>16 Q. You were getting the supplemental forms monthly,</p> <p>17 Jefferson-Pilot meaning you?</p> <p>18 A. Yes.</p> <p>19 Q. And Jefferson-Pilot was issuing the checks?</p> <p>20 A. That's correct.</p> <p>21 Q. But everything else was being taken care of by DMS?</p> <p>22 A. Well, I wouldn't say everything else. I think -- you</p> <p>23 know, they were doing a review. They were attempting</p> <p>24 to get additional information.</p> <p>25 Q. Okay. Your company wasn't engaged in doing that once</p>	<p>Page 53</p> <p>1 A. Not that I'm aware of.</p> <p>2 MR. ROBERTS: I'd like those as well.</p> <p>3 They're not in the claim file.</p> <p>4 MR. ELLIS: What's that?</p> <p>5 MR. ROBERTS: His transmittals to Employers</p> <p>6 Re with the invoices of DMS.</p> <p>7 Q. There's a fax transmittal that's turned sideways,</p> <p>8 April 23, '98, from you to Ditmar. Now, if Mr.</p> <p>9 Kearney's residual disability began prior to the age</p> <p>10 of 45 -- I think we talked about this earlier -- his</p> <p>11 maximum benefit period on the schedule is lifetime,</p> <p>12 correct?</p> <p>13 A. I believe that's correct.</p> <p>14 Q. And in this fax you represent that it's to age 65.</p> <p>15 Was the policy ambiguous on the point?</p> <p>16 A. I don't think it was. Many times -- you didn't go</p> <p>17 back and review the contract every time you got</p> <p>18 involved in the correspondence. Usually if it's a</p> <p>19 lifetime benefit, it would have been written on the</p> <p>20 claim form at the top and you may have just referenced</p> <p>21 that. I'm not sure about that claim form, but it may</p> <p>22 have indicated to age 65 and that's maybe where I got</p> <p>23 that.</p> <p>24 Q. Okay.</p> <p>25 A. But I'm not sure.</p>

14 (Pages 50 to 53)

<p>1 Q. So you've told me today it's lifetime. You said in 2 this letter it was age 65. But to close the loop on 3 that, it's your judgment sitting here today that it 4 would be lifetime, not age 65?</p> <p>5 A. (No response)</p> <p>6 Q. Or was it age 65? You're spending some time to answer 7 this question.</p> <p>8 A. Yes.</p> <p>9 MR. ELLIS: (Indicating)</p> <p>10 MR. ROBERTS: Just getting an accurate 11 record.</p> <p>12 Would you reflect on the record the hand's up 13 to tell me to shut up.</p> <p>14 MR. ELLIS: Actually the hand's up to let you 15 just be patient and let him answer the question.</p> <p>16 A. It does appear that that is the case.</p> <p>17 Q. That it's lifetime?</p> <p>18 A. Yeah.</p> <p>19 Q. That's where as of 2:15 on May 7, 2004, you come out 20 on the issue, right?</p> <p>21 A. Yeah.</p> <p>22 Q. Okay. Did you like the people at DMS that you were 23 dealing with?</p> <p>24 A. Don't think I had any particular one way or the other. 25 It was strictly business. I had no personal</p>	<p>Page 54</p> <p>1 Q. You don't recall any preparatory work to transfer 2 those files?</p> <p>3 A. No.</p> <p>4 Q. Do you know who Rene Hinote is, H-I-N-O-T-E, at a 5 company called ICS?</p> <p>6 A. No, not right off I do not.</p> <p>7 Q. Did you ever use ICS as a vendor for any reason?</p> <p>8 A. I cannot recall. I'm not sure I know what they do.</p> <p>9 Q. When you requested tax returns from Mr. Kearney, was 10 he generally cooperative?</p> <p>11 A. I believe there may have been some delay in getting 12 some of those, but --</p> <p>13 Q. Are you mindful that he always filed an extension to 14 file his tax returns, so he didn't prepare them in 15 April, he prepared them later in the year?</p> <p>16 A. I don't recall that specifically.</p> <p>17 Q. Can I have your Exhibit 23 back, sir.</p> <p>18 A. 23?</p> <p>19 Q. Yeah, actually all these originals.</p> <p>20 A. (Indicating)</p> <p>21 Q. Thanks.</p> <p>22 A. Here's 14 (Indicating).</p> <p>23 Q. Thank you.</p> <p>24 A. And 4 (Indicating)</p> <p>25 Q. Who creates the proposals that prospective</p>
<p>1 relationship with them.</p> <p>2 Q. The next page of this, 2948, you're asking in a very 3 gentlemanly way that you are that you had an invoice 4 about a matter but didn't get the report and you're 5 asking for DMS to send you the report.</p> <p>6 A. Yes.</p> <p>7 Q. Mr. Shelton, did you actually leave work prior to 8 December 31 of '99 and that was simply the effective 9 date of your requirement?</p> <p>10 A. No, worked till the last day.</p> <p>11 Q. Did you really?</p> <p>12 A. (Witness nods head)</p> <p>13 Q. You didn't have any Y2K issues and that's why you 14 checked out?</p> <p>15 A. No.</p> <p>16 Q. Because there is an agreement entered between DMS and 17 Jefferson-Pilot dated December 15 of '99 whereby 18 effective January 1 of 2000, DMS would take over the 19 administration of a good bulk of the claims. You 20 weren't mindful of that prior to your retirement?</p> <p>21 A. No. It probably was handled at a different level. 22 They knew that I was leaving, but they didn't advise 23 me -- they may have just in passing said this is what 24 we're going to do, but it was not particularly 25 anything I was involved in or --</p>	<p>Page 55</p> <p>1 policyholders get to advise them of what the policy 2 they buy might contain?</p> <p>3 A. Usually our Underwriting Department, it is a program 4 by which it's produced, and also some of our agents 5 had the capability to produce proposals.</p> <p>6 Q. Did the company allow agents to create proposals that 7 weren't blessed by the company?</p> <p>8 A. Well, they could present a proposal. That doesn't 9 mean we would accept it necessarily when it was sent 10 in, the application.</p> <p>11 Q. Did they create proposals on Jefferson-Pilot 12 letterhead?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know if Mr. Kearney's proposal was a 15 Jefferson-Pilot document or some document created by 16 somebody --</p> <p>17 A. I do not know at all. Usually we did not in claims 18 deal with the proposal at all.</p> <p>19 Q. Have you given any other depositions in any other 20 matters relating to your work at Jefferson-Pilot?</p> <p>21 A. Several times.</p> <p>22 Q. What was the most recent?</p> <p>23 A. I believe about four or five months ago.</p> <p>24 Q. Was that in the King case?</p> <p>25 A. I believe so.</p>

15 (Pages 54 to 57)

Page 58	Page 60
1 Q. Mississippi? 2 A. Yes. 3 Q. Did you testify at trial in that case? 4 A. No. 5 Q. You settled on the eve of trial? 6 A. (Witness nods head) 7 Q. Was DMS involved in that matter, too? 8 A. I do not recall that they were. 9 Q. Have you ever given any depositions relating to your work at Jefferson-Pilot that also related to DMS's involvement? 12 A. Well, I think the King case was one that they had -- they were processing at the time, DMS. 14 Q. That's correct. Your memory is correct. Any other cases? 16 A. Not that I recall. 17 Q. Did you review with Mr. Ellis over the past couple days the disability claim worksheet in Mr. Kearney's file? 20 A. I believe I just glanced at it. 21 Q. Okay. Do you know if your initials appear as approving payment? 23 A. Not very often, but I think there was -- 24 Q. There was some? 25 A. -- some. It would be HS.	1 what we should be paying and that we were getting all the information we needed to properly consider the claim. That would have been our objective. 4 Q. So there wasn't any one- or two-hour conference calls to educate DMS on -- 6 A. No. 7 Q. Was Phyllis Harden good at her job? 8 A. Yes. 9 Q. How about Mr. Maxwell? 10 A. Yes. 11 Q. We decided not to take his deposition today, by the way. 13 A. Good, I'm glad. His health is not all that good. 14 Q. I asked before I requested. He said it wouldn't be an imposition. 16 A. He did say? 17 Q. His wife said it wouldn't and then she went and confirmed it with him and that's what she told me. 19 A. Yeah, yeah. 20 Q. So maybe he's doing better. 21 A. I'm sure he's willing to cooperate. 22 Q. Thank you. Have you ever testified at trial? 23 A. No, I have not. 24 Q. Do you want to? 25 A. No.
Page 59	Page 61
1 Q. What's the procedure that the company requests or requires before you put your initials on a payment authorization? 4 A. You would have the claim form in front of you and the examiner would look at it. If it's over their limit, then we would review the same thing they had reviewed. 7 Q. Okay. So in this case Phyllis Harden and/or Bob Maxwell would have been the claims examiners because Mr. Kearney's claim was above a certain threshold? 10 A. Yes. 11 Q. Either you or JL would have to sign it as well? 12 A. Right, that's correct. 13 Q. And what did the company require of you before you put your initials down? 15 A. That the payment be correct. 16 Q. Okay. And did you undertake to make certain of that when you -- 18 A. Yes, I tried very hard to do that. 19 Q. Okay. Did you ever have any conversations with DMS of length about the substance of Mr. Kearney's claim or did you just simply send them the file and leave them be? 23 A. No, I think primarily we were just trying to get all the information, make sure that, you know, he was getting the benefits he's entitled and we were paying	1 Q. I might have asked you this earlier. Are you mindful that DMS continued to pay the claim in the same manner that your company did for at least four years after the referral to -- 5 A. I assume that they have been. 6 Q. What I mean in the same manner is, they kept adjusting it for COLA every May and they kept paying Social Security Supplement until sometime in 2002. Are you mindful of that? 10 A. No, I was not. I wasn't aware of how they were paying the claim. 12 Q. After 2000? 13 A. Yeah. 14 Q. Did you ever seek advice of legal counsel during the time that you were at Jefferson-Pilot with regard to Mr. Kearney's claim? 17 A. Not that I recall. We probably would have had something in the file if we had. 19 Q. Under what circumstances would you use the general counsel office of Jefferson-Pilot? 21 A. I think only if there was some legal question about -- while the claim payment is being made, normally we would not have to refer to them. It might just depend on whether there's a complication or not. 25 Q. Did you ever seek their input when there's confusion

<p style="text-align: right;">Page 62</p> <p>1 or debate about the interpretation of a policy?</p> <p>2 A. We could do that.</p> <p>3 Q. Are you mindful of that circumstance ever occurring?</p> <p>4 A. Not specifically, no.</p> <p>5 Q. I've marked Exhibit 22. It contains handwriting. I</p> <p>6 understand it's two different persons' handwriting and</p> <p>7 someone has told me that what's circled is yours.</p> <p>8 A. It appears to be my handwriting.</p> <p>9 Q. Okay. This is in Mr. Kearney's claim file, so I'm</p> <p>10 assuming that there was some undertaking to figure</p> <p>11 what his monthly benefits were at some point.</p> <p>12 A. I would assume so. I'm not sure what this is.</p> <p>13 Q. Okay. But it is your handwriting encircled?</p> <p>14 A. Yes.</p> <p>15 Q. And is it Mr. Maxwell's handwriting otherwise?</p> <p>16 A. It appears to be.</p> <p>17 Q. So you never had principal responsibility for Mr.</p> <p>18 Kearney's claim? That fell to Mr. Maxwell initially</p> <p>19 and then Ms. Harden and you provided them with</p> <p>20 assistance at a managerial level?</p> <p>21 A. Yes, that is correct.</p> <p>22 Q. Mr. Kearney was visited in December '99 by a Michael</p> <p>23 Conlon from International Claims Specialists. He</p> <p>24 purports to be someone out of Cincinnati involved in</p> <p>25 investigation for International Claims Specialists.</p>	<p style="text-align: right;">Page 64</p> <p>1 JP, do you recall?</p> <p>2 A. No, I don't recall them.</p> <p>3 Q. Did you ever speak to Bill Dempsey with Employers</p> <p>4 Reinsurance?</p> <p>5 A. The name is familiar and I think I probably did.</p> <p>6 Q. Do you ever recall speaking to him --</p> <p>7 A. Yes, I do remember Bill.</p> <p>8 Q. Okay. Do you have a recollection of speaking to him</p> <p>9 about Mr. Kearney's claim?</p> <p>10 A. No, I don't.</p> <p>11 Q. Did you ever speak to the agent or do you know of</p> <p>12 anyone who's spoken to the agent that sold the policy</p> <p>13 to Mr. Kearney?</p> <p>14 A. I don't have any recollection. It's possible he</p> <p>15 called when the claim was first initiated, but I don't</p> <p>16 recall.</p> <p>17 Q. Okay. This is Bates 2918. Do you know whose</p> <p>18 handwriting that is?</p> <p>19 A. I really do not. I don't have any idea whose that is.</p> <p>20 Q. 0647 contains a laundry list of policy numbers; is</p> <p>21 that accurate?</p> <p>22 A. Well, I see Bill's name here.</p> <p>23 Q. Bill Dempsey?</p> <p>24 A. Bill Dempsey. He was an attorney with Employers Re</p> <p>25 and these are probably policies that he wanted us to</p>
<p style="text-align: right;">Page 63</p> <p>1 Is that an investigative service that you used while</p> <p>2 at Jefferson-Pilot?</p> <p>3 A. We did not use them very often, but apparently they</p> <p>4 specialize in a particular area which I do not recall,</p> <p>5 but I don't recall using them that often.</p> <p>6 Q. There's an April 25, 1998 memo in the file from</p> <p>7 someone named Janet Beattie, consultant for</p> <p>8 Psychiatric Disability Consultants, Inc., which I</p> <p>9 think is an affiliated entity to Disability Management</p> <p>10 Services. The memo is to Todd Ditmar. Do you recall</p> <p>11 whether or not that memo was ever shared with</p> <p>12 Jefferson-Pilot?</p> <p>13 A. No, I don't. What's the date on that?</p> <p>14 Q. April '98. Would you have discussions with Phyllis</p> <p>15 Harden or Bob Maxwell if they had questions about Mr.</p> <p>16 Kearney's claim?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall them coming to you for counsel or advice</p> <p>19 on the claim?</p> <p>20 A. Nothing specific, no, I don't.</p> <p>21 Q. Do you know who Betty Hand is?</p> <p>22 A. No, I do not.</p> <p>23 Q. How about Sharon Balkcum, B-A-L-K-C-U-M?</p> <p>24 A. I do not recall her specifically.</p> <p>25 Q. Betty Lou Hand, was she somebody you worked with at</p>	<p style="text-align: right;">Page 65</p> <p>1 pull so he could review when he was in town. That</p> <p>2 would be my assumption, but I don't know.</p> <p>3 Q. How do you come to that?</p> <p>4 A. Well, I just know that the only thing that Bill would</p> <p>5 have with a list of numbers are things that he might</p> <p>6 have -- well, no, these are policy forms, not policy</p> <p>7 numbers.</p> <p>8 Q. Are you saying this is Bill Dempsey's handwriting?</p> <p>9 A. I don't know. No, I'm not saying because I don't</p> <p>10 know.</p> <p>11 Q. Do you know whose it is?</p> <p>12 A. No, I don't.</p> <p>13 Q. But does --</p> <p>14 A. He may have just asked for copies of these particular</p> <p>15 forms, maybe that's what --</p> <p>16 Q. That's a laundry list of forms?</p> <p>17 A. Yeah, but I do not know whose it is, nor do I know why</p> <p>18 it was --</p> <p>19 (Defendant's Exhibit No. 24 was marked for</p> <p>20 identification by Mr. Roberts.)</p> <p>21 Q. Exhibit 24, it's my only copy, is 2756. Do you know</p> <p>22 whose handwriting that is? Mr. Maxwell?</p> <p>23 A. Yes, this part in the second paragraph is his.</p> <p>24 Q. Do you recognize any other handwriting on there?</p> <p>25 A. No, I don't.</p>

<p style="text-align: right;">Page 66</p> <p>1 Q. Is there a calculation of the benefit in this 2 document? 3 A. Some kind of calculation, but I'm not sure what it is. 4 Q. Some kind of calculation that appears in Mr. Kearney's 5 claim file and Bates-stamped, right? 6 A. I assume it was in his file. 7 Q. Thank you. During the time frame of '93 to '99, was 8 there anyone other than yourself, Mr. Roberson, 9 Mr. Maxwell, Kim Brann, or Phyllis Harden involved in 10 claims, disability insurance claims at Jefferson-Pilot 11 Life Insurance Company? 12 A. Not that I specifically remember. 13 (Defendant's Exhibit No. 25 was marked for 14 identification by Mr. Roberts.) 15 Q. I've marked as Exhibit 25 a two-sided document, which 16 this is my only copy, 0822 and 0823, that appears to 17 be an October 31, '94 Supplemental Claimant's 18 Statement for Residual Disability Benefits; is that 19 right? 20 A. That's correct. 21 Q. This is date-stamped on the back as November 3, '94 22 receipt? 23 A. Looks like our date stamp, yes. 24 Q. And does Mr. Kearney laundry-list here his monthly 25 income in '94? On this form is his monthly income in</p>	<p style="text-align: right;">Page 68</p> <p>1 A. No, I do not. 2 (Defendant's Exhibit No. 26 was marked for 3 identification by Mr. Roberts.) 4 Q. If Ms. Harden was asked by Mr. Kearney to look to see 5 if there was a COLA adjustment that was called for, do 6 you think that she would have gone to the effort to 7 judge whether or not there was a COLA adjustment 8 called for? 9 A. Yes. 10 Q. I've marked as Exhibit 26 a document Bates labeled 11 2846 that purports to have been faxed by Mr. Kearney, 12 and what's cut off is May 6, '96, to Phyllis Harden. 13 This is a form used for transmitting by fax the 14 supplemental disability claim reports monthly and he 15 writes on this particular one, "Please check to see if 16 yearly increase in benefits is due." 17 Would you suspect that she did what the 18 policyholder asked and looked at the policy to see if 19 one was due? 20 A. Yes. 21 MR. ROBERTS: Okay. Pleasure meeting you, 22 Mr. Shelton. 23 THE WITNESS: You, too. 24 MR. ROBERTS: Have a good day. 25 THE WITNESS: Thanks.</p>
<p style="text-align: right;">Page 67</p> <p>1 '94 broken out per month? 2 A. Yes. 3 Q. So you had a statement of him of his monthly income by 4 month in '94 when he filed this claim? 5 A. \$2,000 a month. 6 Q. Thank you. Am I the slowest lawyer in asking 7 questions that you've ever had? 8 A. It's okay. 9 Q. Has your deposition ever been videotaped? 10 A. I believe so. 11 Q. On more than one occasion? 12 A. I don't recall more than one time. 13 Q. Did you get a copy? 14 A. I did not personally. 15 Q. Did you want one? 16 A. No. 17 Q. I'm going to hand you Bates label 2828, which is a 18 transmittal from Mr. Kearney to Ms. Harden that's 19 contained in the claim file. Was Mr. Kearney advising 20 Ms. Harden that he has gotten an extension on the 21 filing of his tax return? 22 A. Yes. 23 Q. Do you know if Mr. Kearney ever had to remind 24 Jefferson-Pilot to adjust his monthly benefit to 25 account for the COLA?</p>	<p style="text-align: right;">Page 69</p> <p>1 EXAMINATION (by Mr. Ellis): 2 3 Q. Let me ask you a couple questions before you leave, 4 Mr. Shelton. 5 A. Okay. 6 Q. Showing you Exhibit 3, which is the policy, and 7 Exhibit 4, which are the riders that were actually 8 sold to Mr. Kearney, based upon the provisions of 9 those policies -- and I'm sorry, let me give you ones 10 that aren't marked up. 11 MR. ELLIS: Can you hand him Exhibits 3, 4, 12 and 9, please. 13 MR. ROBERTS: Here's the originals 14 (Indicating). 15 Q. Mr. Shelton, based upon the contracts and the riders 16 before you, is there any way that someone on residual 17 disability making an admitted claim for residual 18 disability would be entitled to either the COLA or 19 increase in benefits, depending on which way you 20 prefer to refer to it, or the Social Security benefit? 21 MR. ROBERTS: Objection, calls for a legal 22 conclusion, move to strike the answer. 23 Q. You can answer. 24 A. Let's see, the Social Security is payable if you are 25 entitled to receive monthly benefits for total</p>

18 (Pages 66 to 69)

<p>1 disability.</p> <p>2 Q. You agree that someone who is receiving residual 3 disability would not be entitled to total disability 4 benefits also?</p> <p>5 MR. ROBERTS: Objection, leading, and it also 6 calls for a legal conclusion, two objections.</p> <p>7 A. Repeat the question, please.</p> <p>8 Q. Yeah. Directing your attention to the limitations 9 part of the residual disability, is there any way that 10 someone can be receiving residual disability benefits 11 and total disability benefits at the same time?</p> <p>12 MR. ROBERTS: Objection, calls for a legal 13 conclusion, move to strike the answer.</p> <p>14 A. This is -- the Social Security Supplement benefit is 15 normally paid only if you're receiving the monthly 16 indemnity benefit.</p> <p>17 Q. Okay. My question to you, sir, was, under the 18 limitations in the residual disability rider, can a 19 person be receiving residual disability and total 20 disability benefits at the same time?</p> <p>21 MR. ROBERTS: Objection, asked and answered, 22 calls for a legal conclusion, move to strike the 23 answer.</p> <p>24 A. In my opinion, he cannot be.</p> <p>25 Q. Okay. Why would that be? What's the basis for your</p>	Page 70	<p>1 Supplement benefit, to anyone who is not receiving 2 total disability monthly benefits -- I'm sorry, 3 receiving monthly benefits for total disability?</p> <p>4 MR. ROBERTS: Objection, calls for a legal 5 conclusion.</p> <p>6 A. Would you repeat it one more time, please.</p> <p>7 Q. Yes, sir. I want to know if under the terms of the 8 Social Security Supplement there is any provision 9 granting that benefit, the Social Security Supplement, 10 to anyone who is not receiving benefits for total 11 disability?</p> <p>12 MR. ROBERTS: Objection, calls for a legal 13 conclusion.</p> <p>14 A. I do not see it here. It requires that you be 15 receiving monthly benefits, total disability.</p> <p>16 Q. Is there any provision in either the Social Security 17 Supplement or the residual disability rider that 18 provide for Social Security supplementary benefits 19 while residually disabled?</p> <p>20 MR. ROBERTS: Objection, calls for a legal 21 conclusion.</p> <p>22 A. No.</p> <p>23 Q. Turning to the increase in benefits provision, page 3 24 of the policy WJ576A, which is Exhibit 3, is there any 25 provision that provides in this policy for the</p>	Page 72
<p>1 opinion that you can't be receiving both total and 2 residual at the same time?</p> <p>3 MR. ROBERTS: Objection, calls for a legal 4 conclusion.</p> <p>5 A. Because there are two separate benefits calling for 6 two separate circumstance.</p> <p>7 Q. Does the language in the limitations in the residual 8 disability rider specifically speak to that?</p> <p>9 MR. ROBERTS: Objection, calls for a legal 10 conclusion.</p> <p>11 A. Yes, it does.</p> <p>12 Q. Can you tell me what it says.</p> <p>13 A. "The residual disability benefit will not be paid for 14 any period of time that benefits are payable for total 15 disability or loss of sight, speech, hearing, 16 et cetera."</p> <p>17 Q. In the Social Security benefit rider, is there any 18 grant of a benefit of Social Security adjustments or 19 supplement for a person that is not receiving monthly 20 benefits for total disability?</p> <p>21 MR. ROBERTS: Objection, calls for a legal 22 conclusion.</p> <p>23 A. Repeat that question, please.</p> <p>24 Q. Yes. Under the Social Security Supplement, is there 25 any grant of that benefit, the Social Security</p>	<p>1 increase in benefits as an additional benefit of total 2 disability to be equally applied to residual 3 disability claims?</p> <p>4 MR. ROBERTS: Objection, calls for a legal 5 conclusion.</p> <p>6 A. Now, this is for the COLA? Is that what you're --</p> <p>7 Q. Yes, the increase in benefits.</p> <p>8 A. It again requires total disability --</p> <p>9 Q. If you look to the --</p> <p>10 A. -- to be paid.</p> <p>11 Q. If you look at Exhibit 4 to the additional increase in 12 benefits rider, does that change the provision in such 13 a way as to make it applicable for residual disability 14 under any circumstance?</p> <p>15 MR. ROBERTS: Objection, calls for a legal 16 conclusion.</p> <p>17 A. No.</p> <p>18 Q. Based upon your review of the policy and the 19 adjustments -- I'm sorry, the policy and the riders 20 attached, was Mr. Kearney while filing a claim for 21 residual disability ever entitled to receive benefits 22 under either the COLA or increase in benefits, 23 whichever you call it, and/or the Social Security 24 benefits?</p> <p>25 MR. ROBERTS: Objection, calls for a legal</p>	Page 73	

Page 74 1 conclusion. 2 A. No. 3 Q. Sir, at the beginning of your deposition counsel asked 4 you if I was the one who advised you that a mistake 5 had been made, and you admitted that that was the 6 case. Did you in your own review of the policy and 7 the attachment to the policy conclude whether or not I 8 was correct that there had been a mistake -- 9 MR. ROBERTS: Are you talking about after you 10 told him or before? What time period? 11 MR. ELLIS: At any time. 12 MR. ROBERTS: Well, let's break it down, 13 would you do that for me, to be clear on the record? 14 MR. ELLIS: No. 15 Q. At any time did you determine for yourself whether or 16 not there was an error made in the payment of benefits 17 to Mr. Kearney regarding increase in benefits or the 18 Social Security benefit? 19 MR. ROBERTS: Objection. 20 A. Yes. 21 Q. Are you saying that only because I brought it to your 22 attention or is that based upon your review of the 23 actual contract between the parties? 24 MR. ROBERTS: Objection. He's testified he 25 hasn't reviewed the entire contract.	Page 76 1 every single question where you use argue, that I was 2 arguing with your witness. I wasn't arguing with your 3 witness, was I, Mr. Shelton? 4 THE WITNESS: No. 5 Q. Counsel suggested to you that since the elimination 6 period, the maximum benefit period, and the definition 7 of monthly benefit are the same for both residual and 8 total disability that everything under total 9 disability should be available to residual. Is that 10 the way the contract is written? 11 MR. ROBERTS: Objection, that wasn't the 12 testimony, that wasn't the question, calls for a legal 13 conclusion, and leading. 14 Q. Is that the way these policies are written? 15 MR. ROBERTS: Objection, calls for a legal 16 conclusion and leading. 17 A. Could you repeat the question, please. 18 Q. You recall Mr. Roberts asking you questions about the 19 fact that by reference the residual disability rider 20 brings in the definition -- 21 MR. ROBERTS: Are you showing -- the witness 22 is reading from your notes now you're pointing to with 23 your pen -- 24 THE WITNESS: I'm sorry, I can't see -- 25 MR. ROBERTS: Both of you are one foot apart.
Page 75 1 A. After going through the material and reviewing that, I 2 determined that on my own. 3 MR. ROBERTS: Objection, move to strike, 4 calls for a legal conclusion. 5 Q. Counsel in his question argued to you about whether or 6 not there is a specific prohibition in the residual 7 disability rider that says you don't get Social 8 Security or COLA benefits. I'm going to ask you to 9 look at Exhibit 4 again, which is those riders, and is 10 there any specific exclusion to him receiving a 11 benefit if his house burns down? 12 MR. ROBERTS: Objection, calls for a legal 13 conclusion, irrelevant, argumentative. 14 Q. Pardon? 15 A. No. 16 Q. Are these riders in this contract designed to explain 17 what they don't provide or what they do provide? 18 A. What they do provide. 19 MR. ROBERTS: Objection, calls for a legal 20 conclusion. 21 Q. Counsel argued with you or asked you to review the 22 elimination period -- 23 MR. ROBERTS: Bill, I asked him questions. I 24 didn't argue with him. Unless you change your 25 phrasing of the question, I'm going to object for	Page 77 1 Your head is looking at his notes. Your notes are 2 being followed by a pen as you ask him a question. It 3 certainly appears that you're reading from a script 4 together. 5 MR. ELLIS: A script I just created? 6 MR. ROBERTS: No, probably one you created 7 two days ago and you've convinced this gentleman who's 8 been working for 38 years in the industry that your 9 interpretation of the contract is right and his of 10 10 years is wrong. 11 Q. Do you remember Mr. Roberts asking you about the 12 elimination period being the same for both residual 13 and total? 14 A. Yes. 15 Q. Does the residual rider incorporate the time frame set 16 up as the elimination period by specific language? 17 MR. ROBERTS: Objection, calls for a legal 18 conclusion. Do you know what a legal conclusion is? 19 A. I believe it may have referred to the schedule of 20 benefits. 21 Q. Okay. As to what the maximum benefit period was? 22 MR. ROBERTS: Objection, leading. 23 A. Yeah. 24 MR. ROBERTS: Objection, legal conclusion. 25 Q. Could you look at the residual disability rider

<p style="text-align: right;">Page 78</p> <p>1 itself. Is there any modification to the maximum 2 benefit period that is different from the total 3 disability?</p> <p>4 MR. ROBERTS: Objection.</p> <p>5 Q. Is there any provision in the residual disability 6 rider that modifies the maximum benefit period 7 different than it would be under total disability?</p> <p>8 MR. ROBERTS: Objection, calls for a legal 9 conclusion.</p> <p>10 A. I don't believe so.</p> <p>11 Q. Would you take a look for me at the right-hand column 12 of the residual disability rider, Exhibit 4. 13 Specifically after the part that counsel read to you, 14 there's a statement, "However, if the residual benefit 15 will not" -- "However, the residual benefit will not 16 be paid longer than 24 months if," and then it has an 17 A and B. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Is that the same in the total disability in the 20 policy?</p> <p>21 MR. ROBERTS: Objection, leading. Objection, 22 calls for a legal conclusion.</p> <p>23 A. The policy does not state that.</p> <p>24 Q. Does that modify the maximum benefit period between 25 the residual claim and the total disability claim?</p>	<p>1 the residual benefits being the same as total 2 disability benefits.</p> <p>3 MR. ROBERTS: What's the date of this letter, 4 Counsel?</p> <p>5 MR. ELLIS: I'm sorry, it's January 19, 1998.</p> <p>6 MR. ROBERTS: Okay.</p> <p>7 A. Okay. Your question again?</p> <p>8 Q. Yes. In his letter Mr. Shelton [sic] suggests that 9 you told him that residual benefits were subject to 10 the same terms that are listed in the total disability 11 section.</p> <p>12 MR. ROBERTS: Do you mean Mr. Kearney?</p> <p>13 Q. Did you respond to that writing in letter -- or that 14 letter in writing?</p> <p>15 MR. ROBERTS: Your question is, did Mr. 16 Shelton refer to Mr. Shelton?</p> <p>17 Q. Sorry. Mr. Kearney sent you a letter.</p> <p>18 A. Okay.</p> <p>19 Q. Did you respond to that letter?</p> <p>20 MR. ROBERTS: The January 19 letter?</p> <p>21 A. I just assumed that this January 28 letter is in 22 response to that.</p> <p>23 Q. Does it say so?</p> <p>24 A. Yes, it does.</p> <p>25 Q. Okay. Did you tell him in that letter that the waiver</p>
<p style="text-align: right;">Page 79</p> <p>1 MR. ROBERTS: Objection, calls for a legal 2 conclusion, leading.</p> <p>3 A. I'm not sure about that.</p> <p>4 Q. Okay. Let me ask you, sir, with regard to the answers 5 that you gave counsel, you suggested that the specific 6 items that he referenced were incorporated into the 7 residual rider by reference to the policies. Did I 8 understand your testimony correctly?</p> <p>9 MR. ROBERTS: Objection.</p> <p>10 Q. Counsel asked you about the elimination period, the 11 maximum benefit period, and the definition of monthly 12 benefit. You've testified that they were referred to 13 or incorporated in the residual disability from 14 definitions in the contract; is that right?</p> <p>15 A. I believe that's right.</p> <p>16 MR. ROBERTS: Objection.</p> <p>17 Q. Is there any part of the residual disability rider 18 that you read that references or incorporates an 19 entitlement to either Social Security or COLA?</p> <p>20 MR. ROBERTS: Objection, calls for a legal 21 conclusion.</p> <p>22 A. No.</p> <p>23 Q. In dealing with your letters in Exhibit 23, counsel 24 asked you about the writing Bates numbers 2980 -- 25 2990, a letter to you from Mr. Kearney asking about</p>	<p>1 of premiums provision did not apply?</p> <p>2 A. Yes.</p> <p>3 Q. Was that the discussion wherein there was some 4 misunderstanding as to whether or not he was entitled 5 to total or residual disability?</p> <p>6 A. That's correct.</p> <p>7 MR. ROBERTS: Objection, leading.</p> <p>8 Q. You said that the people you worked with, five of you, 9 were all good at what you did. That would be JL 10 Roberson, Mr. Bob Maxwell, yourself, Phyllis Harden, 11 and I forget the last --</p> <p>12 A. Kim Brann.</p> <p>13 Q. Kim Brann -- were good at what you did, do you agree?</p> <p>14 A. Yes.</p> <p>15 Q. Is there some explanation that you can think of as to 16 why with the five of you handling these claims that 17 there was the error that you testified was made 18 regarding COLA and residual disability benefits to Mr. 19 Kearney?</p> <p>20 MR. ROBERTS: Objection, misstates testimony, 21 leading.</p> <p>22 A. You need to repeat that question. I missed some of 23 it.</p> <p>24 Q. Yes. I'm asking if you have any explanation for the 25 error in overpayment of Mr. Kearney by paying him</p>

21 (Pages 78 to 81)

Page 82		Page 84
1	Social Security and COLA on a residual claim.	1 time.
2	A. The only explanation I can see is that normally all claims started out as total disability. Very unusual, very few that the --	2 Q. Did you have the time to review each claim each month as the payment requests came in?
3	5 MR. ROBERTS: Objection, calls for	3 MR. ROBERTS: Objection.
4	6 speculation. I'm sorry.	4 A. No, I doubt it. I think that the shortcoming that we
5	7 A. -- residual --	5 had was not being able to dig a little deeper into all
6	8 MR. ROBERTS: Go ahead.	6 of the claims when they were being processed.
7	9 A. -- and I think because of that it caused confusion	7 Primarily we were concerned about getting the benefits
8	10 with everyone, but that is strictly my thinking.	8 out.
9	11 Q. Looking at Exhibit 9, specifically page 0962, do you	9
10	12 recognize the handwriting at the top?	10 Q. Was the lack of resources partially at fault, in your
11	13 A. This right here?	11 opinion --
12	14 Q. Yes.	12 MR. ROBERTS: Objection, misstates facts, no
13	15 A. Right off I'm not sure who it is.	13 foundation.
14	16 Q. Would anyone have access to these other than one of	14 Q. -- for the error in payments in Mr. Kearney's case?
15	17 the five of you?	15 MR. ROBERTS: Objection, no foundation,
16	18 A. No.	16 misstates facts, leading.
17	19 Q. The top says "COLA does not apply to residual" and	17 A. Yes, I think so.
18	20 then there's apparently some resolution. What's the	18 MR. ELLIS: Thank you, sir. That's all I
19	21 resolution indicated?	19 have.
20	22 MR. ROBERTS: Objection, leading. He's	20
21	23 pointing at what he wants the witness to say.	21 FURTHER EXAMINATION (by Mr. Roberts):
22	24 A. It says we are paying total disability benefits, COLA	22
23	25 applies.	23 Q. All right. Let's pick it up there. Now, Mr.
24		24 Kearney's claim was a claim that was getting
25		25 attention. You testified that when Chris Kearney
Page 83		Page 85
1	Q. Were you aware of whether or not at the time it was	1 asked Ms. Harden to take a hard look and whether he
2	2 accurate that total disability benefits versus	2 gets COLA that she would have done that.
3	3 residual disability benefits were being paid?	3 A. Yes.
4	4 A. No.	4 Q. You testified that Employers Reinsurance came to your
5	5 MR. ROBERTS: Objection.	5 office in '97 and essentially audited Mr. Kearney's
6	6 A. I was not.	6 file, right?
7	7 Q. Is that the type of confusion you were referring to	7 A. I don't know whether it was in '97, but they came and
8	8 between total and residual in Mr. Kearney's claim?	8 would review certain files. I assume they reviewed
9	9 MR. ROBERTS: Objection, leading.	9 his, because --
10	10 A. I would think so, yeah.	10 Q. And you didn't just have three people looking at Mr.
11	11 Q. Sir, of the five of you handling the claims during the	11 Kearney's file, you had the three of you employed at
12	12 period of time '94 to the time you retired -- well,	12 the date of your retirement plus for two years you had
13	13 let me ask it this way. At the time you retired, how	13 the DMS people and their entire legal staff looking at
14	14 many of you were there?	14 the policy, right? Didn't we establish that today?
15	15 A. Four of us.	15 A. I think that appears to be correct.
16	16 Q. Who were they?	16 Q. Okay. So his just wasn't one of a thousand claims
17	17 A. That was -- well, actually three of us: Phyllis, Kim,	17 getting lost in the works here; his claim was getting
18	18 and myself.	18 a lot of attention in the late '90s, wasn't it?
19	19 Q. What was the claim load that you three were handling?	19 A. Based on DMS's involvement.
20	20 A. I suspect a thousand a month, a thousand claims a	20 Q. And Employers Reinsurance wanted to specifically audit
21	21 month.	21 that file, right?
22	22 Q. Were the three of you physically capable of managing	22 A. Yes.
23	23 that many claims per month?	23 Q. Were they overloaded and they couldn't figure it out
24	24 MR. ROBERTS: Objection.	24 either?
25	25 A. Well, we had to. We didn't have any option at that	25 A. I don't know.

22 (Pages 82 to 85)

<p style="text-align: right;">Page 86</p> <p>1 Q. Is JL Roberson qualified to examine these policies, in 2 your judgment?</p> <p>3 A. Yes.</p> <p>4 Q. Does he look at every single claim?</p> <p>5 A. No.</p> <p>6 Q. So if he looked at Kearney's claim, he would have done 7 it affirmatively to examine something, right?</p> <p>8 A. Based on -- well, based on the amount of benefits.</p> <p>9 Q. Okay. Mr. Kearney's claim was a lot, so he was 10 getting more attention than someone getting \$100 a 11 month, \$1,000 a month?</p> <p>12 A. Well, it had to be approved by Mr. Roberson.</p> <p>13 Q. Okay. But he actually wrote letters to Mr. Kearney, 14 too, are you mindful of that?</p> <p>15 A. I'm not sure particularly what he did.</p> <p>16 Q. Do you suspect that he wrote all the claimants that 17 filed disability claims, Vice President of the 18 company?</p> <p>19 A. No, he did not.</p> <p>20 Q. Mr. Ellis argued that reference in Exhibit 9, Bates 21 0962, where it says, "We are pay TD benefits, COLA 22 applies." Do you know who wrote that?</p> <p>23 A. No, I don't.</p> <p>24 Q. Do you know when it was written?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 88</p> <p>1 disability rider and tell me if you see an exclusion 2 for intentional self-inflicted wounds.</p> <p>3 A. I don't see it.</p> <p>4 Q. Okay. But you don't think the policy permits residual 5 disability benefits for intentional self-inflicted 6 wounds, do you?</p> <p>7 A. I'm not sure.</p> <p>8 Q. They would be excluded just like they're excluded in 9 the core policy that was purchased, right?</p> <p>10 A. I'm not sure right --</p> <p>11 Q. Probably? Unclear? Ambiguous?</p> <p>12 A. I'm just not sure.</p> <p>13 Q. Okay. Let's go over another one.</p> <p>14 A. I'm going to have to take a break right quick if it's 15 okay.</p> <p>16 Q. Yes, sir, absolutely.</p> <p>17 (Brief recess)</p> <p>18 Q. I think we're back on the policy again, Mr. Shelton.</p> <p>19 Page 3 -- actually page 4 excludes in the limitations 20 and exclusions provision --</p> <p>21 A. Page 4, yes.</p> <p>22 Q. Page 4, yes, sir.</p> <p>23 A. Okay.</p> <p>24 Q. -- excludes liability when injury is caused by some 25 war incident?</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. Okay. Do you know what the reference to "We are pay 2 TD benefits" -- I mean, if someone is getting -- if 3 someone's loss in residual disability exceeds 4 75 percent, they get the total disability benefit, 5 right?</p> <p>6 A. They get the total benefit.</p> <p>7 Q. Thank you.</p> <p>8 A. Disability -- total disability benefit.</p> <p>9 Q. Thank you. Let's talk about a couple of other 10 matters. Now, Mr. Ellis says that it doesn't matter 11 that you use elimination period total disability 12 definition for residual, it doesn't matter that you 13 use maximum benefit period total disability definition 14 for residual, it doesn't matter that you use monthly 15 benefit total disability definition for residual. You 16 don't use it for waiver of premium. Well, let's take 17 another look at the policy. There's other issues in 18 the policy --</p> <p>19 MR. ELLIS: I object to the speech, but --</p> <p>20 Q. -- that aren't referenced in the residual disability 21 rider that must apply. Do you pay residual disability 22 benefits for self-inflicted wounds, intentionally 23 self-inflicted wounds?</p> <p>24 A. Right off I don't know.</p> <p>25 Q. Okay. Well, why don't you take a look at the residual</p>	<p style="text-align: right;">Page 89</p> <p>1 A. Yes.</p> <p>2 Q. Do you pay residual disability benefits for war-caused 3 disabilities?</p> <p>4 A. Residual disability?</p> <p>5 Q. Yeah.</p> <p>6 A. I would say that we would not.</p> <p>7 Q. Okay. Where does it say that in the residual 8 disability rider? Where is the specific reference to 9 that, if that's where we're going to draw the line?</p> <p>10 A. I don't know.</p> <p>11 Q. Is there a reference to that in the residual 12 disability rider?</p> <p>13 A. I don't see it in this rider.</p> <p>14 Q. How about normal pregnancy or resulting childbirth 15 that's excluded in the policy? If there's a residual 16 disability caused by pregnancy or childbirth, are 17 residual disability benefits payable?</p> <p>18 A. I'm sorry, repeat that question, please.</p> <p>19 Q. Are residual disabilities caused by pregnancy or 20 childbirth payable? I know that they're excluded 21 under total disability, but do you pay them if they 22 result in residual disability?</p> <p>23 A. I'm not sure.</p> <p>24 Q. The residual disability rider doesn't say either way, 25 correct?</p>

<p style="text-align: right;">Page 90</p> <p>1 A. That's correct.</p> <p>2 Q. So you don't know whether it does or doesn't pay, 3 right?</p> <p>4 A. Yes.</p> <p>5 Q. Because it's ambiguous, right?</p> <p>6 A. Well, it doesn't appear that that's here.</p> <p>7 Q. Okay. How about the next page of the policy? The 8 heading is Suspension During Military Service. Are 9 residual disability benefits suspended during military 10 service?</p> <p>11 A. It says it will suspend the policy, and this would be 12 a part of the policy.</p> <p>13 Q. Okay. So the residual disability rider doesn't say 14 anything about that, but you're concluding from the 15 policy because it says policy?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Is it ambiguous or do you think it's explicit? 18 Because the policy is just a total disability policy.</p> <p>19 MR. ELLIS: Can he answer your question 20 before you testify?</p> <p>21 MR. ROBERTS: What does the hand mean? Shut 22 up; is that right?</p> <p>23 MR. ELLIS: I'm just asking if you can let 24 him answer your question before you keep telling 25 him --</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Yes.</p> <p>2 Q. Okay. So if something is not in the residual 3 disability rider, some provisions that may apply may 4 not be in the residual disability rider, correct, for 5 example, this one?</p> <p>6 A. The way that exclusion is written, yes.</p> <p>7 Q. Okay. So although Suspension During Military Service 8 isn't referenced in the residual disability rider, 9 your conclusion is, it's part of the residual 10 disability rider?</p> <p>11 A. Simply because the residual disability rider cannot 12 exist by itself.</p> <p>13 Q. That's not my question. My question is, Suspension 14 During Military Service is not referenced in the 15 residual disability rider, but residual disability 16 benefits are suspended during military service?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And waiver of premium isn't in the residual 19 disability rider, but there is no waiver of premium, 20 right?</p> <p>21 A. It makes reference to total disability.</p> <p>22 Q. Okay. So do a whole bunch of other things, right?</p> <p>23 A. Beg your pardon?</p> <p>24 Q. So do a whole bunch of other things?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 91</p> <p>1 MR. ROBERTS: I'm just trying to clarify the 2 ambiguity of your hand.</p> <p>3 A. Would you repeat the question again, I'm sorry.</p> <p>4 Q. Scrap that question. We'll get to it in a second.</p> <p>5 Turn to page 1. The first sentence of the 6 policy says, "Jefferson-Pilot hereby issues you 7 against loss due to total disability as defined herein 8 and to the extent provided in this policy," right? Do 9 you see that?</p> <p>10 A. Yes.</p> <p>11 Q. So this policy covers total disability. So when we 12 talk in the Suspension During Military Service section 13 about Jefferson-Pilot will suspend this policy, does 14 that mean total disability or does that reference mean 15 residual disability, too?</p> <p>16 A. Well, the residual cannot exist without the policy, so 17 if we suspend the policy, it would suspend the 18 residual also.</p> <p>19 Q. But there never is residual disability because the 20 policy is a total disability policy.</p> <p>21 A. But this is a part of that total disability policy as 22 a rider.</p> <p>23 Q. Okay. So to you it's express that Suspension During 24 Military Service applies during residual disability 25 even though it's not in the residual disability rider?</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. Have you ever seen an ambiguous insurance policy?</p> <p>2 A. I don't know that I could particularly --</p> <p>3 Q. Thirty-eight years, you've never seen anything about 4 an insurance policy that's ambiguous?</p> <p>5 A. I think that probably if it were, this is when we 6 would go to Legal Department to make sure that --</p> <p>7 Q. Have you ever done that?</p> <p>8 A. Right off I don't recall that we did that, but --</p> <p>9 MR. ROBERTS: Okay. I'm done. Thank you.</p> <p>10 FURTHER EXAMINATION (by Mr. Ellis):</p> <p>11 Q. One final question. You testified in answer to 12 counsel's prodding that --</p> <p>13 MR. ROBERTS: Prodding? I was not prodding.</p> <p>14 Was I prodding you, Mr. Shelton?</p> <p>15 Q. -- if someone had --</p> <p>16 MR. ROBERTS: Wait a minute. No, you're 17 making a record here. Someone is going to read this 18 later and think that you're right because you like to 19 say things that aren't true.</p> <p>20 MR. ELLIS: I'd just like to ask the 21 question.</p> <p>22 MR. ROBERTS: Stop, no. You're not going to 23 mischaracterize my treatment of your witness.</p>

24 (Pages 90 to 93)

Page 94		Page 96
1	MR. ELLIS: I'll rephrase the question.	1 ERRATA SHEET
2	MR. ROBERTS: No. Was I prodding you, Mr.	2 RE: Jefferson-Pilot v. Kearney
3	Shelton?	3 DEPOSITION OF: Harold Shelton
4	THE WITNESS: No.	4 Please read this original deposition with
5	Q. In response to counsel's question, you said that	5 care, and if you find any corrections or changes you
6	someone who has a loss of income in excess of	6 wish made, list them by page and line number below.
7	75 percent gets the total disability benefits; is that	7 DO NOT WRITE IN THE DEPOSITION ITSELF. Return the
8	right?	8 deposition to this office after it is signed. We
9	A. Yes.	9 would appreciate your prompt attention to this matter.
10	Q. And in your opinion, does that include the benefits	10 To assist you in making any such
11	for COLA and Social Security and everything else?	11 corrections, please use the form below. If
12	A. That includes that monthly indemnity benefit.	12 supplemental or additional pages are necessary, please
13	Q. I'm sorry. Does it include the COLA and the Social	13 furnish same and attach them to this errata sheet.
14	Security --	14 Page ____ Line ____ should read:
15	MR. ROBERTS: Objection, calls for a legal	15 _____
16	conclusion.	16 Reason for change _____
17	Q. Is that what you were intending to tell counsel --	17 Page ____ Line ____ should read:
18	A. No, that's not --	18 _____
19	MR. ROBERTS: Objection, calls for a legal	19 Reason for change _____
20	conclusion.	20 Page ____ Line ____ should read:
21	Q. What were you intending to tell counsel that applies	21 _____
22	to someone who's over 75 percent loss of income?	22 Reason for change _____
23	A. It would be the basic -- that monthly indemnity	23 Page ____ Line ____ should read:
24	benefit.	24 _____
25	MR. ROBERTS: Objection, calls for a legal	25 Reason for change _____
Page 95		Page 97
1	conclusion.	1 Page ____ Line ____ should read:
2	MR. ELLIS: That's all I have. Thank you.	2 _____
3	MR. ROBERTS: Thank you, Mr. Shelton.	3 Reason for change _____
4	(Deposition concluded at 3:30 p.m.)	4 Page ____ Line ____ should read:
5	_____	5 _____
6	Signature of the Witness	6 Reason for change _____
7	SUBSCRIBED and SWORN TO before me this _____ day of	7 Page ____ Line ____ should read:
8	_____ , 2004.	8 _____
9	_____	9 Reason for change _____
10	NOTARY PUBLIC	10 Page ____ Line ____ should read:
11	My Commission expires: _____	11 _____
12	_____	12 Reason for change _____
13	_____	13 Page ____ Line ____ should read:
14	_____	14 _____
15	_____	15 Reason for change _____
16	_____	16 Page ____ Line ____ should read:
17	_____	17 _____
18	_____	18 Reason for change _____
19	_____	19 Page ____ Line ____ should read:
20	_____	20 _____
21	_____	21 Reason for change _____
22	_____	22 Page ____ Line ____ should read:
23	_____	23 _____
24	_____	24 Reason for change _____
25	_____	25 _____

25 (Pages 94 to 97)

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1 STATE OF NORTH CAROLINA)
2) C E R T I F I C A T E
3 COUNTY OF GUILFORD)

4 I, REBECCA J. HUDDY, Notary Public, do hereby
5 certify that HAROLD SHELTON was duly sworn by me prior
6 to the taking of his deposition; that said deposition
7 was taken and transcribed by me; and that the
8 foregoing ninety-seven (97) pages are a true and
9 accurate transcript of the testimony of said HAROLD
10 SHELTON.

11 I further certify that I am not of counsel
12 for or in the employment of any of the parties to this
13 action, nor am I interested in the result of said
14 action.

15 IN WITNESS WHEREOF, I have hereunto
16 subscribed my name this 11th day of May, 2004.

17

18

19

20

REBECCA J. HUDDY

Notary Public

21

My Commission Expires July 26, 2005

22

23

24

25

26 (Page 98)

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